



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

June 30, 1986

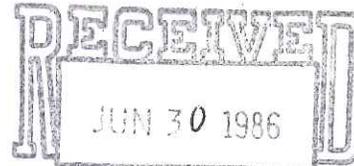
REPLY TO THE ATTENTION OF:

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

SCA-16

Substation Maintenance, Inc.
c/o Bernard Siegel
Vice-President
120 Elmwood
Seville, Ohio 44273



REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Re: Substation Maintenance, Inc.
Docket No. TSCA-V-C-487

Mr. Siegel:

On June 13, 1985, the U.S. EPA, Region V, filed an administrative Complaint against Substation Maintenance, Inc. (Substation) alleging violations of Section 15 of TSCA, and implementing regulations, 40 C.F.R. §761 et seq. See, Attachment 1. The action alleged that Substation had violated Federal regulations regarding the storage, marking and disposal of polychlorinated biphenyls ("PCBs"), 40 C.F.R. §761 et seq., promulgated under Section 6 of TSCA.

On July 24, 1985, Substation filed an Answer denying the allegations and requesting a hearing. See, Attachment 2. The assigned Administrative Law Judge, Spencer T. Nissen, directed the parties, failing settlement, to supply pre-hearing information on or before October 3, 1985. By an Order, dated November 13, 1985, Judge Nissen required the parties to furnish pre-hearing information on or before December 13, 1985. The Order specifically provided that failure to comply would result in dismissal of the proceeding with prejudice or entry of a Default Order. See, Attachment 3.

The U.S. EPA provided the pre-hearing information. See, Attachment 4. Substation failed to comply with the Order of November 13, 1985, and to date has not given any reason for such failure or responded to the Order. On January 23, 1986, the U.S. EPA moved for a Default Order. See, Attachment 5. Substation did not respond to this motion.

On February 24, 1986, Judge Nissen issued a Default Order finding Substation violated TSCA and regulations promulgated thereunder and assessing a penalty in the amount of \$15,000 in accordance with Section 16(a) of TSCA. See, Attachment 6. The Order required

payment of the full amount of the penalty payable within 60 days of the Order to the Treasurer of the United States at the address of the Regional Hearing Clerk, Region V, U.S. EPA. On May 1, 1986, the U.S. EPA sent a letter to Robert W. Russell, Chief Executive Officer of Substation, requesting payment within five days. Mr. Russell never responded to the letter. See Attachment 7.

To date the Regional Hearing Clerk has not received payment of this penalty assessed against Substation Maintenance, Inc. The 60 days having expired since the Default Order was issued, Substation Maintenance, Inc., is now overdue in making this payment. Unless Substation pays this penalty within 10 days of receipt of this letter or unless Substation appeals as set forth in 40 CFR §22.10 (see attached Regulations), the U.S. EPA will refer this matter to the Department of Justice for collection.

Your prompt attention to this matter is expected.

Respectfully,



Stephen P. Mendoza
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
(212) 886-6828

Enclosures

cc: Honorable Spencer T. Nissen
Administrative Law Judge

Regional Hearing Clerk

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 1986, along with the attached letter, the below listed documents were sent certified mail return receipt requested to:

Bernard Siegel
Vice-President
Substation Maintenance, Inc.
120 Elmwood
Seville, Ohio 44273

1. Administrative Complaint, Docket No. TSCA-V-C-407, entered June 14, 1985.
2. Respondent's Answer in Case No. TSCA-V-C-407, entered July 24, 1985.
3. ORDER of Administrative Law Judge Nissen, Docket No. TSCA-V-C-407, dated November 13, 1985.
4. U.S. EPA's Prehearing Exchange Reply, Docket No. TSCA-V-C-407, dated December 13, 1985.
5. Motion for Default Order, Docket No. TSCA-V-C-407, entered January 27, 1986.
6. Default Order of Administrative Law Judge Nissen, Docket No. TSCA-V-C-407, issued February 24, 1986.
7. U.S. EPA collection letter to Mr. Robert W. Russell, dated May 1, 1986.
8. 40 CFR Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties



Stephen P. Mendoza
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

MAY 01 1986

RECEIVED
MAY 5 1986

5CA-16

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert W. Russell
Chief Executive Officer
Substation Maintenance, Inc.
480 N. Main Street
Grafton, Ohio 44044

Re: Substation Maintenance, Inc.
TSCA-V-C-407

Dear Mr. Russell,

Enclosed is a copy of Judge Nissen's Default Order issued on February 24, 1986, in which he found Substation Maintenance, Inc. (Substation) in default for failure to comply with the ALJ's order of November 13, 1985. In his Order, Judge Nissen found Substation Maintenance, Inc., to have violated Section 15 of the Toxic Substances Control Act (TSCA) and implementing regulations promulgated under TSCA.

For these violations he assessed a penalty in the amount of \$15,000 in accordance with Section 16(a) of the Act. Payment of the full amount of this penalty was to be made within 60 days of receipt of this order by forwarding a cashiers or certified check, payable to the Treasurer of the United States, to the Regional Hearing Clerk, Region V, U.S. EPA P.O. Box 70753, Chicago, Illinois 60673.

To date, the Regional Hearing Clerk has not received payment of the \$15,000 penalty. The 60 days having passed since the Default Order was issued, Substation Maintenance, Inc., is now overdue in making this payment.

Unless Substation Maintenance, Inc., pays this penalty within 5 days of receipt of this letter in the manner explained in the Judges Default Order, U.S. EPA will refer this matter to the Department of Justice for collection.

Your prompt attention to this matter is expected.

Sincerely,

Levi Wood

Levi Wood
Assistant Regional Counsel

Enclosure

cc: Honorable Spencer T. Nissen
Administrative Law Judge

Regional Hearing Clerk ✓

Donald P. McFadden

bcc: Pam Rekar

Greg Czajkowski

IN THE MATTER OF:)
Substation Maintenance, Inc.) DOCKET NO. TSCA-V-C-407
)
)

CERTIFICATE OF SERVICE

I hereby certify that the Default Order in the above referenced case, and this certificate have been served as shown below:

Default Order & Certificate mailed Certified mail
on February 26, 1986 to:

Robert W. Russell, Esquire
Chief Executive Officer
Substation Maintenance, Inc.
Grafton, Ohio 44044

Don P. McFadden
Registered Agent for Substation
Maintenance, Inc.
One Public Square, Suite 1000
Cleveland, Ohio 44113

James L. Kimbler
P.O. Box 153
Lodi, Ohio 44254

Certificate mailed February 26, 1986 to:

Regional Hearing Clerk:
Bessie Hammel
U.S. Environmental Protection Agency
401 M. Street S.W., A-110
Washington, D.C. 60204

Certificate and Default Order hand delivered to:

Levi Wood, Esquire
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

February 26, 1986



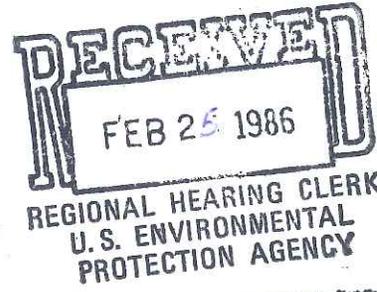
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

MAIL CODE A-110

February 24, 1986

OFFICE OF
THE ADMINISTRATOR



Ms. Beverly Shorty
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Subject: Substation Maintenance, Inc.,
Docket No. TSCA-V-C-407

Dear Ms. Shorty:

Enclosed for distribution in accordance with 40 CFR 22.27(a) are five copies of a default order entered in the captioned proceeding, which in accordance with 40 CFR 22.17(b) becomes an initial decision. Please serve all individuals listed under "Appearances for Respondent." A copy of the return receipts or other evidence of receipt of the decision by the Respondent should be provided to the Hearing Clerk.

The original of the decision together with my file in the matter have been delivered to the Hearing Clerk and it will be unnecessary for you to furnish a copy of the decision or the record of the proceeding to that office.

Sincerely yours,

Spencer T. Nissen
Administrative Law Judge

Enclosures

Default Order

This proceeding under § 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)) was commenced on June 13, 1985, by the issuance of a complaint charging Respondent, Substation Maintenance, Inc., with violations of the Act and regulations. Specifically, Respondent was charged with failure to properly store at its Grafton, Ohio facility 17 drums of PCB solids and a PCB transformer, to date all PCB articles when they are placed in storage, to clean up spilled PCBs and with illegal disposal of PCBs in violation of § 15 of the Act and applicable regulations, 40 CFR §§ 761.65(b)(1), 761.65(c)(5), 761.65(c)(8) and 761.60(a). For these alleged violations, it was proposed to assess Respondent a penalty totaling \$15,000.

Respondent answered, denying the alleged violations and requesting a hearing.

The proceeding was assigned to the undersigned ALJ on August 7, 1985, and by letter, dated August 12, 1985, the parties, failing settlement, were directed to supply certain prehearing information on or before October 2, 1985. Specifically, Respondent was ordered to furnish a summary of any evidence relied upon to support denial of substantive allegations of complaint, to supply a summary of evidence to support allegations that all the PCB materials in question had been removed from the Grafton facility, that said materials were placed there under license from Transformer Services of Ohio, Inc. and to supply financial data, if Respondent contended the proposed penalty was beyond its ability to pay. Neither party

complied with this directive and by an order, dated November 13, 1985, the parties were directed to furnish the information on or before December 13, 1985. The order specifically provided that failure to comply would result in dismissal of the proceeding with prejudice in accordance with 40 CFR 22.20 or entry of a default order pursuant to 40 CFR 22.17.

Complainant furnished its prehearing information under date of December 13, 1985. Respondent failed to comply with the order of November 13, 1985, and has not given any reason for such failure or otherwise responded to the order. Under date of January 23, 1986, Complainant, noting the above failure, moved for a default order pursuant to 40 CFR 22.17. Respondent has not responded to the motion in any manner.

Respondent's failure to comply with the ALJ's order constituting a default in accordance with 40 CFR 22.17(a) and an admission of the factual allegations of the complaint, I hereby make the following:

Findings of Fact

1. Respondent, Substation Maintenance, Inc., is a corporation incorporated under the laws of the State of Ohio.
2. On October 17, 1984, Respondent maintained a place of business and a facility in Grafton, Ohio.
3. On October 17, 1984, Respondent had 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors in storage for disposal at the mentioned facility.
4. The 17 drums of PCB solids and three PCB transformers mentioned above were placed in storage more than 30 days prior to October 17, 1984,

and the drums and one of the transformers (American Transformer, Serial No. 960361) were stored in an area lacking continuous curbing.

5. The 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors referred to above were not dated with the date these articles were placed in storage.
6. Two of the mentioned PCB transformers were in a metal bin containing approximately two inches of an oil-water mixture on October 17, 1984, which mixture contained PCBs at a concentration of 21 ppm.
7. The American PCB transformer referred to in finding 4 had a two-foot x two-foot oil spot beneath its drain tap on October 17, 1984, indicating an uncontrolled discharge of PCBs.

Conclusions

1. Respondent's action in storing 17 drums of PCB solids (PCB articles) and one PCB transformer for more than 30 days in an area lacking continuous curbing constitutes a violation of 40 CFR 761.65(b)(1).
2. Respondent's failure to mark the date the 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors were placed in storage constitutes a violation of 40 CFR 761.65(c).
3. Respondent's failure to clean up the PCBs in the oil and water mixture in the bin containing two PCB transformers constitutes a violation of 40 CFR 761.65(c)(5).
4. The uncontrolled discharges of PCBs from American Transformer, Serial No. 960361, is an illegal disposal of PCBs in violation of 40 CFR 761.60(a).

5. For the above violations of the regulations and § 15 of the Act, Respondent is liable for a penalty in the amount of \$15,000 in accordance with § 16(a) of the Act.

Discussion

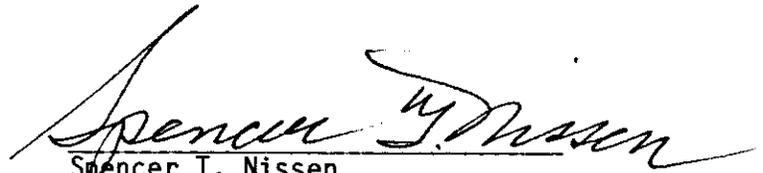
Respondent, being in default for failure to comply with the ALJ's order of November 13, 1985, is deemed, pursuant to 40 CFR 22.17(a), to have admitted the allegations of the complaint and in accordance with the cited section is liable for the full amount of the penalty of \$15,000 proposed in the complaint.

ORDER

Respondent, Substation Maintenance, Inc., having been found to have violated the Toxic Substances Control Act and regulations promulgated thereunder in the particulars recited above, is assessed a penalty in the amount of \$15,000 in accordance with § 16(a) of the Act. Payment of the full amount of the penalty shall be made by forwarding a cashiers or certified check, payable to the Treasurer of the United States to the following address within 60 days of receipt of this order:*

Regional Hearing Clerk
Region V, U.S. EPA
P. O. Box 70753
Chicago, Illinois 60673

Dated this 24th day of February 1986.


Spencer T. Nissen
Administrative Law Judge

* In accordance with 40 CFR 22.17(b), this default order constitutes an initial decision, which pursuant to 40 CFR 22.27(c) will become the final order of the Administrator unless appealed in accordance with § 22.30 or unless the Administrator elects, sua sponte, to review the same as therein provided.

ROUTING AND TRANSMITTAL SLIP

Date 4-22-86

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <u>Beverly Shorty, Regional H/C</u>		
2.		
3.		
4.		
5.		

RECEIVED
APR 29 1986

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS
There was no appeal in Substation Maintenance Inc Dkt. no. TSCA-V-C-407. Transmitted in the original of the Default Order.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
<u>Maria White</u>	
<u>Off. of Hearing Clerk Hgt</u>	Phone No.
	<u>382-4866</u>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

MAIL CODE A-110

February 24, 1986

OFFICE OF
THE ADMINISTRATOR

Ms. Beverly Shorty
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

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APR 29 1986
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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FINANCIAL MANAGEMENT
DIVISION

Subject: Substation Maintenance, Inc.,
Docket No. TSCA-V-C-407

Dear Ms. Shorty:

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The original of the decision together with my file in the matter have been delivered to the Hearing Clerk and it will be unnecessary for you to furnish a copy of the decision or the record of the proceeding to that office.

Sincerely yours,

Spencer T. Nissen
Administrative Law Judge

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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EPA HEADQUARTERS
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In the Matter of)
Substation Maintenance, Inc.,) Docket No. TSCA-V-C-407
Respondent)

Toxic Substances Control Act - Rules of Practice - Default - Where Respondent failed to comply with ALJ's order requiring the exchange of prehearing information, Respondent was found to be in default pursuant to § 22.17 of the Rules of Practice (40 CFR Part 22), to have admitted violations charged and assessed full amount of penalty proposed in complaint.

Appearances for Respondent: Robert W. Russell
Chief Executive Officer
Substation Maintenance, Inc.
480 N. Main Street
Grafton, Ohio 44044

Don P. McFadden
Registered Agent for Substation
Maintenance, Inc.
One Public Square, Suite 1000
Cleveland, Ohio 44113

James L. Kimbler, Esq.
P. O. Box 153
Lodi, Ohio 44254

Appearance for Complainant: Levi Wood, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Default Order

This proceeding under § 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)) was commenced on June 13, 1985, by the issuance of a complaint charging Respondent, Substation Maintenance, Inc., with violations of the Act and regulations. Specifically, Respondent was charged with failure to properly store at its Grafton, Ohio facility 17 drums of PCB solids and a PCB transformer, to date all PCB articles when they are placed in storage, to clean up spilled PCBs and with illegal disposal of PCBs in violation of § 15 of the Act and applicable regulations, 40 CFR §§ 761.65(b)(1), 761.65(c)(5), 761.65(c)(8) and 761.60(a). For these alleged violations, it was proposed to assess Respondent a penalty totaling \$15,000.

Respondent answered, denying the alleged violations and requesting a hearing.

The proceeding was assigned to the undersigned ALJ on August 7, 1985, and by letter, dated August 12, 1985, the parties, failing settlement, were directed to supply certain prehearing information on or before October 2, 1985. Specifically, Respondent was ordered to furnish a summary of any evidence relied upon to support denial of substantive allegations of complaint, to supply a summary of evidence to support allegations that all the PCB materials in question had been removed from the Grafton facility, that said materials were placed there under license from Transformer Services of Ohio, Inc. and to supply financial data, if Respondent contended the proposed penalty was beyond its ability to pay. Neither party

complied with this directive and by an order, dated November 13, 1985, the parties were directed to furnish the information on or before December 13, 1985. The order specifically provided that failure to comply would result in dismissal of the proceeding with prejudice in accordance with 40 CFR 22.20 or entry of a default order pursuant to 40 CFR 22.17.

Complainant furnished its prehearing information under date of December 13, 1985. Respondent failed to comply with the order of November 13, 1985, and has not given any reason for such failure or otherwise responded to the order. Under date of January 23, 1986, Complainant, noting the above failure, moved for a default order pursuant to 40 CFR 22.17. Respondent has not responded to the motion in any manner.

Respondent's failure to comply with the ALJ's order constituting a default in accordance with 40 CFR 22.17(a) and an admission of the factual allegations of the complaint, I hereby make the following:

Findings of Fact

1. Respondent, Substation Maintenance, Inc., is a corporation incorporated under the laws of the State of Ohio.
2. On October 17, 1984, Respondent maintained a place of business and a facility in Grafton, Ohio.
3. On October 17, 1984, Respondent had 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors in storage for disposal at the mentioned facility.
4. The 17 drums of PCB solids and three PCB transformers mentioned above were placed in storage more than 30 days prior to October 17, 1984,

- and the drums and one of the transformers (American Transformer, Serial No. 960361) were stored in an area lacking continuous curbing.
5. The 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors referred to above were not dated with the date these articles were placed in storage.
 6. Two of the mentioned PCB transformers were in a metal bin containing approximately two inches of an oil-water mixture on October 17, 1984, which mixture contained PCBs at a concentration of 21 ppm.
 7. The American PCB transformer referred to in finding 4 had a two-foot x two-foot oil spot beneath its drain tap on October 17, 1984, indicating an uncontrolled discharge of PCBs.

Conclusions

1. Respondent's action in storing 17 drums of PCB solids (PCB articles) and one PCB transformer for more than 30 days in an area lacking continuous curbing constitutes a violation of 40 CFR 761.65(b)(1).
2. Respondent's failure to mark the date the 17 drums of PCB solids, three PCB transformers and 42 large PCB capacitors were placed in storage constitutes a violation of 40 CFR 761.65(c).
3. Respondent's failure to clean up the PCBs in the oil and water mixture in the bin containing two PCB transformers constitutes a violation of 40 CFR 761.65(c)(5).
4. The uncontrolled discharges of PCBs from American Transformer, Serial No. 960361, is an illegal disposal of PCBs in violation of 40 CFR 761.60(a).

5. For the above violations of the regulations and § 15 of the Act, Respondent is liable for a penalty in the amount of \$15,000 in accordance with § 16(a) of the Act.

Discussion

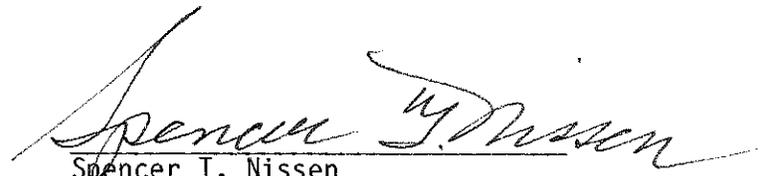
Respondent, being in default for failure to comply with the ALJ's order of November 13, 1985, is deemed, pursuant to 40 CFR 22.17(a), to have admitted the allegations of the complaint and in accordance with the cited section is liable for the full amount of the penalty of \$15,000 proposed in the complaint.

O R D E R

Respondent, Substation Maintenance, Inc., having been found to have violated the Toxic Substances Control Act and regulations promulgated thereunder in the particulars recited above, is assessed a penalty in the amount of \$15,000 in accordance with § 16(a) of the Act. Payment of the full amount of the penalty shall be made by forwarding a cashiers or certified check, payable to the Treasurer of the United States to the following address within 60 days of receipt of this order:*

Regional Hearing Clerk
Region V, U.S. EPA
P. O. Box 70753
Chicago, Illinois 60673

Dated this 24th day of February 1986.


Spencer T. Nissen
Administrative Law Judge

* In accordance with 40 CFR 22.17(b), this default order constitutes an initial decision, which pursuant to 40 CFR 22.27(c) will become the final order of the Administrator unless appealed in accordance with § 22.30 or unless the Administrator elects, sua sponte, to review the same as therein provided.

RECEIVED
MAY 1
APR 30 1986
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN RE:)
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SUBSTATION MAINTENANCE, INC.)
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Respondent.)
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)

Docket No. TSCA-V-C-407

AFFIDAVIT

I, Beverly Shorty, Regional Hearing Clerk, U.S. EPA Region V, am custodian of all materials filed in administrative actions brought under the Consolidated Rules of Practice in Region V, including actions brought pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. §2615(a). At the request of Levi E. Wood, counsel for Complainant, in this action, I have made a search of my files and do not show any records or receipt of a payment or any correspondence about a payment from Respondent Substation Maintenance, Inc., in the above captioned matter.

Further affiant sayeth not.

Beverly Shorty
Beverly Shorty
Regional Hearing Clerk

Subscribed and Sworn to me
this 15 day of May, 1986.

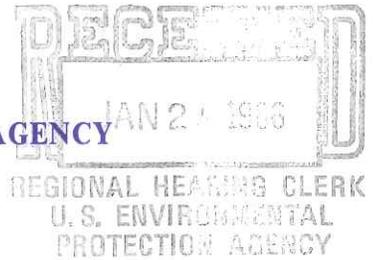
Notary Public *Mar. P. [Signature]*

My Commission expires on *September 15, 1987*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604



REPLY TO THE ATTENTION OF:

JAN 23 1986

Ms. Beverly Shorty
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
230 S. Dearborn Street
Chicago, Illinois 60604

5CA-16

Re: Substation Maintenance, Inc.
Docket No. TSCA-V-C407

Attached for filing please find a Motion For Default
Order and a Default Order and Initial Decision.

Very truly yours,

A handwritten signature in cursive script that reads "Levi E. Wood".

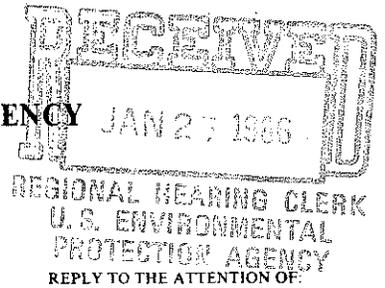
Levi E. Wood
Assistant Regional Counsel

Attachments

cc: Honorable Judge Spencer T. Nissen (w/enclosures)
Robert W. Russell (w/enclosures)
Donald P. McFadden (w/enclosures)
James L. Kimbler (w/enclosures)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604



JAN 23 1986

Ms. Beverely Shorty
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
230 S. Dearborn Street
Chicago, Illinois 60604

5CA-16

Re: Substation Maintenance, Inc.
Docket No. TSCA-V-C407

Attached for filing please find a Motion For Default
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Very truly yours,

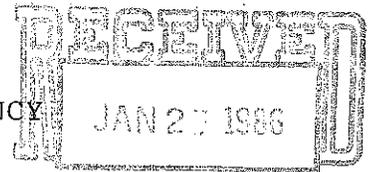
A handwritten signature in cursive script that reads "Levi E. Wood".

Levi E. Wood
Assistant Regional Counsel

Attachments

cc: Honorable Judge Spencer T. Nissen (w/enclosures)
Robert W. Russell (w/enclosures)
Donald P. McFadden (w/enclosures)
James L. Kimbler (w/enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V



REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

IN THE MATTER OF:)
)
SUBSTATION MAINTENANCE, INC.) Docket No. TSCA-V-C-407
)
Respondent.)
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MOTION FOR DEFAULT ORDER

Pursuant to 40 C.F.R. §22.17 Complainant moves that Respondent be found in default and that a Default Order be issued against Respondent. As the basis for the finding of default, Complainant states as follows:

1. On August 12, 1985, the Presiding Officer, Judge Spencer T. Nissen, directed a prehearing exchange take place on or before October 2, 1985.

2. On November 13, 1985, neither party having complied with the directive in the ALJ's letter, dated August 12, 1985, for the submission of prehearing information, Judge Spencer T. Nissen ordered: "that the information required of the parties by the mentioned letter be submitted on or before December 13, 1985."

3. Judge Nissen's November 13, 1985, order further stated: "Failure to comply with this order will result in dismissal of the proceeding with prejudice in accordance with 40 C.F.R. §22.20 or the entry of a default order pursuant to 40 C.F.R. §22.20."

4. Complainant complied with this order by filing the prehearing information in a letter dated December 13, 1985.

5. As of the date of filing this motion Respondent has not filed the response required by Judge Nissen's order of November 13, 1985. As such, Respondent has failed to comply with the Judge's order.

6. 40 C.F.R. §22.17(a) Default provides in pertinent part that:

"A party may be found to be in default...
(2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer...."

7. Respondent has failed to comply with a prehearing order of the Presiding Officer.

8. The failure of Respondent to comply with the Presiding Officer's prehearing order is cause for the issuance of a default order against Respondent pursuant to 40 C.F.R. §22.17 and as indicated in Judge Nissen's order of November 13, 1985.

9. As required by 40 C.F.R. §22.17(a) a proposed default order is included with this motion for default, both of which have been served upon all parties.

Wherefore, Complainant moves that Respondent be found in default and that a default order be issued against Respondent.

Respectfully submitted,

Dated: JAN 23 1985

 Levi E. Wood
Levi E. Wood
Assistant Regional Counsel
Counsel for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)
)
SUBSTATION MAINTENANCE, INC.) Docket No. TSCA-V-C-407
)
Respondent.)
_____)

DEFAULT ORDER AND INITIAL DECISION

Pursuant to 40 C.F.R. §22.17 and on motion by Complainant, the Presiding Officer makes the following findings and order.

FINDINGS OF FACT

1. On June 17, 1985, a Complaint and Notice of Opportunity for Hearing was properly filed with the Regional Hearing Clerk initiating a civil administrative action against Respondent Substation Maintenance, Inc., pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2615(a) seeking civil penalties of Fifteen Thousand Dollars (\$15,000) for violations of Section 15 of TSCA, 15 U.S.C. Section 2614, and Federal regulations regarding the storage and disposal of polychlorinated biphenyls (PCBs), 40 C.F.R. Part 761.

2. Respondent was served by mail with the Complaint and Notice of Opportunity for Hearing on June 17, 1985.

3. On July 24th, 1985, Respondent, by its Attorney, Donald P. McFadden, mailed an Answer and Request For Hearing

on the alleged violations to Complainant and the Regional Hearing Clerk. This Answer was filed on or about July 26, 1985.

4. On August 12, 1985, Administrative Law Judge, Spencer T. Nissen, the Presiding Officer, issued a letter requiring a prehearing exchange as authorized by 40 C.F.R. Section 22.19(e). Respondent was served with a copy of this letter by mail.

5. Said letter stated in pertinent part:
Accordingly, it is directed that the following prehearing exchange take place:

By Complainant and Respondent

1. Desired or required location for the hearing (see Rules 22.19(d) and 22.21(d)).
2. Furnish the names of expected witnesses and copies of any documents or exhibits proposed to be offered at the hearing to the extent not covered by specific requests below.

By Respondent

1. Provide summary of any evidence supporting denial of substantive allegations of complaint.
2. Furnish summary of evidence supporting allegations that all PCB materials have been removed from the Grafton facility and that the materials were placed there under license from Transformer Services of Ohio, Inc. or pursuant to the activities of one Gregory Booth.
3. If Respondent is contending that proposed penalty would adversely effect its ability to remain in business, furnish financial statements or other data supporting such contention.

Response to this letter will be furnished to the Regional Hearing Clerk, to the other party and to the undersigned on or before October 2, 1985.

6. Neither party having complied with the directive in this ALJ letter, dated August 12, 1985, for the submission of prehearing information, on November 13, 1985, Judge Nissen ordered that the information required of the parties by the above mentioned letter be submitted on or before December 13, 1985.

7. Respondent was required to make its response to the above directive by December 13, 1985. Any reply Respondent had to Complainant's submission, which was filed by December 13, 1985, was required to be filed by December 27, 1985.

8. Respondent did not file any response as required by the Presiding Officer's order of November 13, 1985.

CONCLUSIONS OF LAW

1. Respondent failed to comply with the Presiding Officer's prehearing exchange directive of August 12, 1985.

2. Respondent failed to comply with the Presiding Officer's order of November 13, 1985.

3. Respondent's failure to comply with these orders prejudices Complainant's right to discover Respondent's defenses and to prepare adequately for hearing.

ORDER

1. Respondent Substation Maintenance, Inc., is found to be in default for failure to comply with a prehearing order of the Presiding Officer pursuant to 40 C.F.R. §22.17(a).

2. Respondent is deemed to have admitted all the facts alleged in the Complaint filed in this action.

3. Respondent is deemed to have waived its right to a hearing on the allegations contained in the Complaint filed in this action.

4. Respondent shall pay the civil penalty proposed in the Complaint of FIFTEEN THOUSAND DOLLARS (\$15,000.00), within sixty (60) days of the date of this order.

5. Respondent shall pay this civil penalty by cashier's or certified check payable to the order of the Treasurer of the United States and shall remit payment to the Regional Hearing Clerk (5CA-16), U.S. Environmental Protection Agency, Region V, P.O. Box 70753, Chicago, Illinois 60673. Failure to remit such payment will result in referral of this matter to the United States Attorney for collection pursuant to Section 16(a) of TSCA, 15 U.S.C. Section 2615(a).

6. This order shall become effective immediately.

Dated: _____

Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

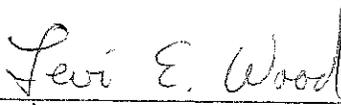
I, Levi E. Wood, Assistant Regional Counsel, hereby certify that I caused copies of the foregoing Motion For Default Order and Default Order and Initial Decision to be served to the following parties in the following manner:

Hand Delivered	Regional Hearing Clerk U.S. EPA, Region V 230 South Dearborn Street Chicago, Illinois 60604
Certified Mail Return Receipt Requested	Honorable Spencer T. Nissen Administrative Law Judge Office of Administrative Law Judges (A-110) U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460
Certified Mail Return Receipt Requested	Robert W. Russell, Chief Executive Officer Substation Maintenance, Inc. 480 N. Main Street Grafton, Ohio 44044
Certified Mail Return Receipt Requested	Mr. Donald P. McFadden One Public Square Suite 1000 Cleveland, Ohio 44113

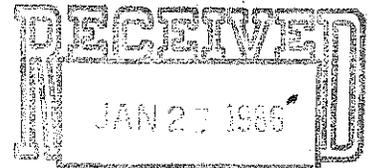
and

Certified Mail Return Receipt Requested	Mr. James L. Kimbler Attorney at Law P.O. Box 153 Lodi, Ohio 44254
---	---

Dated: JAN 27 1988



Levi E. Wood
Assistant Regional Counsel
Counsel for Complainant



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION V U.S. ENVIRONMENTAL PROTECTION AGENCY

IN RE:)
SUBSTATION MAINTENANCE, INC.) Docket No. TSCA-V-C-407
Respondent.)
_____)

AFFIDAVIT

I, Beverly Shorty, Regional Hearing Clerk, U.S. EPA Region V, am custodian of all materials filed in administrative actions brought under the Consolidated Rules of Practice in Region V, including actions brought pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. §2615(a). At the request of Levi E. Wood, counsel for Complainant, in this action, I have made a search of my files and do not show any records or receipt of a prehearing exchange or any correspondence about a prehearing exchange from Respondent Substation Maintenance, Inc. in the above captioned matter.

Further affiant sayeth not.

Kathleen J. Taylor for
Beverly Shorty
Regional Hearing Clerk

KATHLEEN J-TAYLOR
ACTING FOR

Subscribed and Sworn to me
this 23 day of January, 1986.

Notary Public *Mary P. Stearns*

My Commission expires on September 18, 1987



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

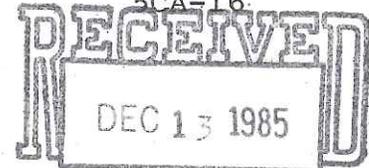
REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5CA-16



REGIONAL HEARING CLERK
U. S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law
Judges (A-110)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Substation Maintenance, Inc.
TSCA-V-C-407

Dear Judge Nissen,

In accordance with your prehearing exchange directive of August 12, 1985, as amended November 13, 1985, Complainant supplies the following information:

I. Witnesses for Government to be Called at Hearing
and Narrative Summary of Expected Testimony

George R. Carter, Environmental Scientist, Ohio EPA, Columbus, Ohio. Mr. Carter will testify regarding his inspections of the Substation Maintenance, Inc. facility at Grafton, Ohio, in the course of his duties as a delegated U.S. EPA PCB inspector under the cooperative agreement program. Mr. Carter will also testify regarding communications with Substation Maintenance, Inc. personnel, procedures employed in collecting samples and chain of custody.

Gregory P. Czajkowski, Environmental Scientist, Pesticides and Toxic Substances Branch, Environmental Services Division, U.S. EPA, Region V, Chicago, Illinois. Mr. Czajowski will testify concerning the nature, circumstances, extent and gravity of the alleged violations, the appropriateness of the proposed penalty, and the conformity of the proposed penalty to the Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act, PCB Penalty Policy.

Daniel F. Fisher, Environmental Scientist, Ohio EPA, Columbus, Ohio. Mr. Fisher will testify regarding his inspections of the Substation Maintenance, Inc. facility at Grafton, Ohio, in the course of his duties as a delegated U.S. EPA PCB inspector under the cooperative agreement program. Mr. Fisher will also testify regarding procedures employed in collecting samples and chain of custody procedures.

Complainant respectfully reserves the right to supplement this witness list.

II. Documents and Exhibits Intended to be Introduced into Evidence

A. Complainant's Exhibit 1.

Report on Inspection to Determine Compliance with the PCB Disposal and Marking Regulations; Substation Maintenance 4984 Gateway Drive, Medina, Ohio 44256, dated October 17, 1984, with Appendices A. through D.

B. Complainant's Exhibit 2.

Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, as published in the Federal Register at pages 59770 to 59783, Vol. 45, No. 177 (September 10, 1980).

C. Complainant's Exhibit 3.

Laboratory results on analysis for PCBs of samples taken during Substation Maintenance inspection of October 17, 1984.

Complainant respectfully reserves the right to supplement this Exhibit list.

III. Statements Responding to Specific Requests made of Complainant in the Prehearing Exchange Directive

1. A copy of the report of inspection of Respondent's Grafton, Ohio facility, conducted on October 17, 1985, by Ohio Environmental Protection Agency officials as authorized representatives of U.S. EPA is included as Complainant's Ex. 1.

2. Section VI.B. of the inspection report entitled Storage states "Seventeen drums of solid PCB waste were noted in an undiked area of the building (Photo 1)." "Manifests indicate ten of these drums were received from Amoco Oil (Whiting, Indiana) on 8/9/84 (Appendix D, Page 1), five were received from Amoco Oil (Whiting, Indiana) on 7/19/84 (Appendix D, Page 2), one was received from Arco Chemical (Beaver Valley, PA.) on 7/1/84 (Appendix D, Page 3), and one from Ford Motor

Co. (Louisville, Kentucky) on 6/7/84 (Appendix D, Page 4)." The inspection report further explains that three PCB transformers, two located in a steel bin and one on the floor without diking, were received on August 7 and August 8, 1984, by the Respondent for the purpose of disposal. The EPA inspectors observed this stored PCB material on October 17, 1984, and noted that the 17 drums of PCB material and one of the three PCB transformers were not stored in an area which meets the criteria for storage in excess of 30 days as required in 40 C.F.R. §761.65(b)(1).

3. Refer to Section VI.B. of the inspection report entitled Storage. "Seventeen drums of solid PCB waste were noted in an undiked area of the building (Photo 1)." Although the drums were marked with M_L labels, the inspection report states, "They were not marked with the date they were placed in storage." Section VI. B. also states, "The third PCB transformer was noted on the floor without diking. This unit was marked M_L. The date of storage was not marked." Section VI.B. of the inspection report further states that "Forty-two large high voltage capacitors (indicated on Manifest # 0488 as PCB) were noted in a steel bin"..... "No storage date was marked on the bin."

4. Section VI.B. of the inspection report refers to the two PCB transformers stored in a steel bin, approximately three feet high (Photo 2). The report states further that "Approximately two inches of an oil/water mixture was noticed in the bottom of the bin."

5. The analysis referred to in Paragraph 10, Count I is presented in Appendix C of the inspection report (Complainant's Ex. 3).

6. Section VI.B. of the inspection report states that an American Transformer Co. Asbestol Transformer, Serial Number 960361 was observed in an undiked area at the building. Asbestol is a trade name for PCB dielectric fluid. The inspectors observed an oil stained area measuring 2 ft. x 2 ft. around the base and below the drain tap of this PCB transformer.

7. No analysis of the stained soil beneath the transformer was performed.

IV. Complainant's View on Location for the Hearing

Section 22.21(d) of the Consolidated Rules of Practice requires that the location of the hearing shall be determined in accordance with the method established for determining the location of a prehearing conference as set forth in Section 22.19(d). Section 22.19(d) states that the prehearing conference shall be held in the county where the Respondent conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Region Office is located, or in Washington, D.C., unless the presiding officer determines that there is good cause to hold it at another

location in a region or by telephone, or otherwise. With one of the witnesses and counsel for Complainant located in Chicago, Illinois, which is the city in which the relevant EPA Regional Office is located, Complainant respectfully recommends that the hearing be held in Chicago.

Respectfully submitted,



Levi E. Wood
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Enclosures

cc: Honorable Spencer T. Nissen
Administrative Law Judge (w/enclosures)

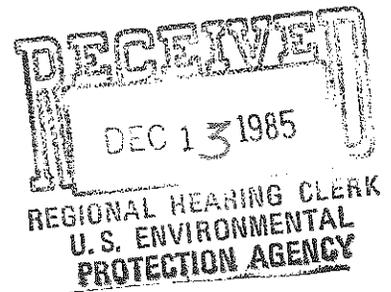
Regional Hearing Clerk (Hand delivered w/enclosures)

Robert W. Russell, Chief Executive Officer
Substation Maintenance, Inc.
480 N. Main Street
Grafton, Ohio 44044

Mr. James L. Kimbler
Attorney at Law
P.O. Box 153
Lodi, Ohio 44254

Donald P. McFadden
One Public Square
Suite 1000
Cleveland, Ohio 44113

REPORT ON INSPECTION TO DETERMINE
COMPLIANCE WITH THE PCB DISPOSAL
AND MARKING REGULATIONS



SUBSTATION MAINTENANCE
4984 GATEWAY DRIVE
MEDINA, OHIO 44256

OCTOBER 17, 1984

PERFORMED BY:

OHIO ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EMERGENCY RESPONSE
P.O. BOX 1049
COLUMBUS, OHIO 43216-1049

AS AUTHORIZED UNDER THE U.S. EPA
PILOT TSCA COOPERATIVE ENFORCEMENT
AGREEMENT PROGRAM.

PCB COMPLIANCE INSPECTION REPORT

I. COMPANY IDENTIFICATION

Substation Maintenance, Inc.
4984 Gateway Drive
Medina, Ohio 44256
(216) 722-1170

Location Inspected:

Substation Maintenance, Inc.
480 North Main Street
Grafton, Ohio 44044

RESPONSIBLE OFFICIAL

Mr. Robert Russell, Chief Executive Officer

II. DATE OF INSPECTION

October 17, 1984

III. PARTICIPANTS

Company

Mr. Benjamin N. Storrs, Sales Manager

Ohio EPA

Mr. George R. Carter (Author), Environmental Scientist II
Mr. Daniel Z. Fisher, Environmental Scientist II

IV. OBJECTIVES

The inspection was made to document the company's PCB handling, storage, and disposal practices and to determine its compliance with PCB Disposal and Marking Regulations (40 CFR, Part 761), as published in the May 31, 1979 Federal Register and amended by the Final Rule of August 25, 1982.

V. COMPANY BACKGROUND

Operation-Transformer servicing
Area Served-Regional
Year Established-May, 1984
Parent/Home Company-Associated Merchants, 4984 Gateway Drive,
Medina, Ohio 44256
Reason for inspection-Compliant, Ohio EPA Case # 11,526

VI. INSPECTION SUMMARY

A. Opening Conference

A Notice of Inspection and TSCA Inspection Confidentiality Notice were issued to and signed by Mr. Ben Storrs, Sales Manager for Substation Maintenance, Inc. (S.M.I.). The storage of PCB items at S.M.I.'s Grafton facility was discussed.

B. Storage

Several PCB items were noted in storage at the Grafton facility. According to Mr. Storrs, all items in storage had been transferred to the building from a drop-bed truck the previous Friday (October 12). Seventeen drums of solid PCB waste were noted in an undiked area of the building (Photo 1). All drums were marked M L. They were not marked with the date they were placed in storage. Manifests indicate ten of these drums were received from Amoco Oil (Whiting, Indiana) on 8/9/84 (Appendix D, page 1), five were received from Amoco Oil (Whiting, Indiana) on 7/19/84 (Appendix D, page 2), one was received from Arco Chemical (Beaver Valley, Pa.) on 7/1/84, (Appendix D, page 3) and one from Ford Motor Co. (Louisville, Ky.) on 6/7/84 (Appendix D, page 4).

Three PCB transformers were noted in the building. Two were placed in a steel bin approximately three feet high (Photo 2). Nameplates could not be read, however the bin was marked as containing materials from Manifest #0480 (Appendix D page 5). This manifest indicates the units together held 100 gallons of liquid. Approximately two inches of an oil/water mixture was noticed in the bottom of the bin. This was sampled and found to contain 21 ppm PCB in the oil portion. Both units as well as the bin were marked M L. Storage dates were not marked on these items.

The third PCB transformer (from Chicago Extruded Metals, Manifest #0488-Appendix D, page 6) was noted on the floor without diking. This unit, American Transformer Co. Asbestos Transformer S/N 960361 (43 gallons) had a leak around the valve. Oil contamination on the building floor was noticed around the base and below the valve (Photo 3). The area of contamination was estimated by the inspector at 2 ft. X 2 ft. This unit was marked M L. The date of storage was not marked.

Forty-two large high-voltage capacitors (Manifest #0488) were noted in a steel bin measuring approximately 6 ft. long by 6 ft. wide by 3 ft. high (Photo 2). The bin was marked M L. No storage date was marked on the bin.

A large high-voltage capacitor (General Electric Pyranol S/N D11011- 1.9 gallons) was noted in a steel bin outside on the building's north lot (Photo 4).

Approximately 3000 gallons of PCB contaminated mineral oil from transformer retrofills for Paulding-Putnam Rural Electric Co-Operative in Paulding, Ohio were stored in a tanker trailer (Photo 5). According to Mr. Storrs, the PCB concentration of the liquid was between 170 and 190 ppm. The tanker was found non-leaking and in good condition.

C. Disposal

No PCB items have been disposed by this facility.

D. Recordkeeping

Manifests were available for all materials at the Grafton facility (Appendix D). Inspection records were not maintained on PCB items at the facility.

E. Marking/Labeling

All PCB items at the facility were marked M L. Storage dates were not marked on any PCB items.

VII. Photographs

1. Solid PCB waste in an undiked area of the building.
2. Two PCB transformers in a steel bin and a bin of capacitors.
3. Oil contamination below American Transformer Company Asbestol Transformer S/N 960361.
4. Large high-voltage PCB capacitor on the buildings north lot.
5. Tanker trailer containing 3000 gallons of PCB contaminated mineral oil.

VIII. Samples

<u>Sample No.</u>	<u>Description</u>	<u>Result</u>
ER 975	Oil sample-Bin #0480	21 ppm PCB

APPENDICES

- A. Inspection Documents
Chain of Custody
- B. Photographs
- C. Results-Laboratory Analysis
- D. Additional Supporting Documentation

APPENDIX A



US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

Form Approved
OMB No. 2070-0007
Approval expires 8-31-85

TOXIC SUBSTANCES CONTROL ACT

NOTICE OF INSPECTION

1. INVESTIGATION IDENTIFICATION			2. TIME	3. FIRM NAME
DATE	INSPECTOR NO.	DAILY SEQ. NO.	2:58	SUBSTATION MAINTENANCE, INC.
17 Oct. 1984	OH-019	02		
4. INSPECTOR ADDRESS			5. FIRM ADDRESS	
OEPA-ER P.O. Box 1049 COLS, OH 43216-1049			4984 Gateway Dr. MEDINA, OHIO 44256	

REASON FOR INSPECTION

Under the authority of Section 11 of the Toxic Substances Control Act:

For the purpose of inspecting (including taking samples, photographs, statements, and other inspection activities) an establishment, facility, or other premises in which chemical substances or mixtures or articles containing same are manufactured, processed or stored, or held before or after their distribution in commerce (including records, files, papers, processes, controls, and facilities) and any conveyance being used to transport chemical substances, mixtures, or articles containing same in connection with their distribution in commerce (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of the Act applicable to the chemical substances, mixtures, or articles within or associated with such premises or conveyance have been complied with.

In addition, this inspection extends to (Check appropriate blocks):

- A. Financial data
- B. Sales data
- C. Pricing data
- D. Personnel data
- E. Research data

The nature and extent of inspection of such data specified in A through E above is as follows:

INSPECTOR SIGNATURE		RECIPIENT SIGNATURE	
<i>George R. Carter</i>		<i>Benjamin N. Storrs</i>	
NAME		NAME	
GEORGE R. CARTER		BENJAMIN N. STORRS	
TITLE	DATE SIGNED	TITLE	DATE SIGNED
ES II	17 Oct. 1984	SALES MGR.	Oct 17, 1984



TOXIC SUBSTANCES CONTROL ACT

TSCA INSPECTION CONFIDENTIALITY NOTICE

1. INVESTIGATION IDENTIFICATION			2. FIRM NAME	
DATE 17 Oct. 1984	INSPECTOR NO. OH-019	DAILY SEQ. NO. 02	SUBSTATION MAINTENANCE, INC.	
3. INSPECTOR NAME GEORGE R. CARTER			4. FIRM ADDRESS 4984 GATEWAY DR. MEDINA, OHIO 44256	
5. INSPECTOR ADDRESS OEPA-ER P.O. BOX 1049 COLS., OH. 43216-1049			6. CHIEF EXECUTIVE OFFICER NAME ROBERT RUSSELL	
			7. TITLE SECRETARY/TREASURER	

TO ASSERT A CONFIDENTIAL BUSINESS INFORMATION CLAIM

It is possible that EPA will receive public requests for release of the information obtained during inspection of the facility above. Such requests will be handled by EPA in accordance with provisions of the Freedom of Information Act (FOIA), 5 USC 552; EPA regulations issued thereunder, 40 CFR Part 2; and the Toxic Substances Control Act (TSCA), Section 14. EPA is required to make inspection data available in response to FOIA requests unless the Administrator of the Agency determines that the data contain information entitled to confidential treatment or may be withheld from release under other exceptions of FOIA.

Any or all the information collected by EPA during the inspection may be claimed confidential if it relates to trade secrets or commercial or financial matters that you consider to be confidential business information. If you assert a CBI claim, EPA will disclose the information only to the extent, and by means of the procedures set forth in the regulations (cited above) governing EPA's treatment of confidential business information. Among other things, the regulations require that EPA notify you in advance of publicly disclosing any information you have claimed as confidential business information.

A confidential business information (CBI) claim may be asserted at any time. You may assert a CBI claim prior to, during, or after the information is collected. The declaration form was developed by the Agency to assist you in asserting a CBI claim. If it is more convenient for you to assert a CBI claim on your own stationery or by marking the individual documents or samples "TSCA confidential business information," it is not necessary for you to use this form. The inspector will be glad to answer any questions you may have regarding the Agency's CBI procedures.

While you may claim any collected information or sample as confidential business information, such claims are unlikely to be upheld if they are challenged unless the information meets the following criteria:

- The information is not, and has not been, reasonably obtainable without your company's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding).
- The information is not publicly available elsewhere.
- Disclosure of the information would cause substantial harm to your company's competitive position.

At the completion of the inspection, you will be given a receipt for all documents, samples, and other materials collected. At that time, you may make claims that some or all of the information is confidential business information.

If you are not authorized by your company to assert a CBI claim, this notice will be sent by certified mail, along with the receipt for documents, samples, and other materials to the Chief Executive Officer of your firm within 2 days of this date. The Chief Executive Officer must return a statement specifying any information which should receive confidential treatment.

The statement from the Chief Executive Officer should be addressed to:

MARION YOUNG
US EPA REGION II
230 S. DEARBORN
CHICAGO, ILLINOIS 60604

and mailed by registered, return-receipt requested mail within 7 calendar days of receipt of this Notice. Claims may be made any time after the inspection, but inspection data will not be entered into the special security system for TSCA confidential business information until an official confidentiality claim is made. The data will be handled under the agency's routine security system unless and until a claim is made.

TO BE COMPLETED BY FACILITY OFFICIAL RECEIVING THIS NOTICE:		If there is no one on the premises of the facility who is authorized to make business confidentiality claims for the firm, a copy of this Notice and other inspection materials will be sent to the company's chief executive officer. If there is another company official who should also receive this information, please designate below.	
I have received and read the notice			
SIGNATURE <i>Benjamin N. Stores</i>	NAME		
NAME BENJAMIN N. STORES	TITLE		
TITLE Sales Mgr.	DATE SIGNED Oct. 17, 1984	ADDRESS	



TOXIC SUBSTANCES CONTROL ACT
RECEIPT FOR SAMPLES AND DOCUMENTS

1. INVESTIGATION IDENTIFICATION			2. FIRM NAME
DATE 17 Oct. 1984	INSPECTOR NO. OH-019	DAILY SEQ. NO. 02	SUBSTATION MAINTENANCE, INC.
3. INSPECTOR ADDRESS DEPA-ER P.O. Box 1049 Cols., OH. 43216-1049			4. FIRM ADDRESS 4984 Gateway Dr. Medina, OH. 44756

The documents and samples of chemical substances and/or mixtures described below were collected in connection with the administration and enforcement of the Toxic Substances Control Act.

RECEIPT OF THE DOCUMENT(S) AND/OR SAMPLE(S) DESCRIBED IS HEREBY ACKNOWLEDGED:

NO.	DESCRIPTION
	<p>- Haz waste manifest #s 0475, 0526, 0481, 0484, 0488, 0480, 0486</p> <p>- list of materials in storage @ Grafton & Kennedy Facility</p> <p>Various photographs at Grafton facility</p> <p>Oil sample - bin # 0480</p>

OPTIONAL:

DUPLICATE OR SPLIT SAMPLES: REQUESTED AND PROVIDED NOT REQUESTED

INSPECTOR SIGNATURE <i>George R. Carter</i>		RECIPIENT SIGNATURE <i>Benjamin N. Storrs</i>	
NAME GEORGE R. CARTER		NAME BENJAMIN N. STORRS	
TITLE ESII	DATE SIGNED 17 Oct. 1984	TITLE Lab Man	DATE SIGNED Oct. 17, 1984



US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

Form Approved
OMB No. 2070-0007
Approval expires 8-31-85

TOXIC SUBSTANCES CONTROL ACT

DECLARATION OF CONFIDENTIAL BUSINESS INFORMATION

1. INVESTIGATION IDENTIFICATION			2. FIRM NAME	
DATE 17 Oct 1984	INSPECTOR NO. OH-019	DAILY SEQ. NO. 02	SUBSTATION MAINTENANCE, INC.	
3. INSPECTOR ADDRESS OEPA-ER P.O. Box 1049 COLS., OH. 43216-1049			4. FIRM ADDRESS 4984 Gateway Dr. MEDINA, OHIO 44256	

INFORMATION DESIGNATED AS CONFIDENTIAL BUSINESS INFORMATION

NO.	DESCRIPTION
	No CBI declared during inspection

ACKNOWLEDGEMENT BY CLAIMANT

The undersigned acknowledges that the information described above is designated as Confidential Business Information under Section 14(c) of the Toxic Substances Control Act. The undersigned further acknowledges that he/she is authorized to make such claims for his/her firm.

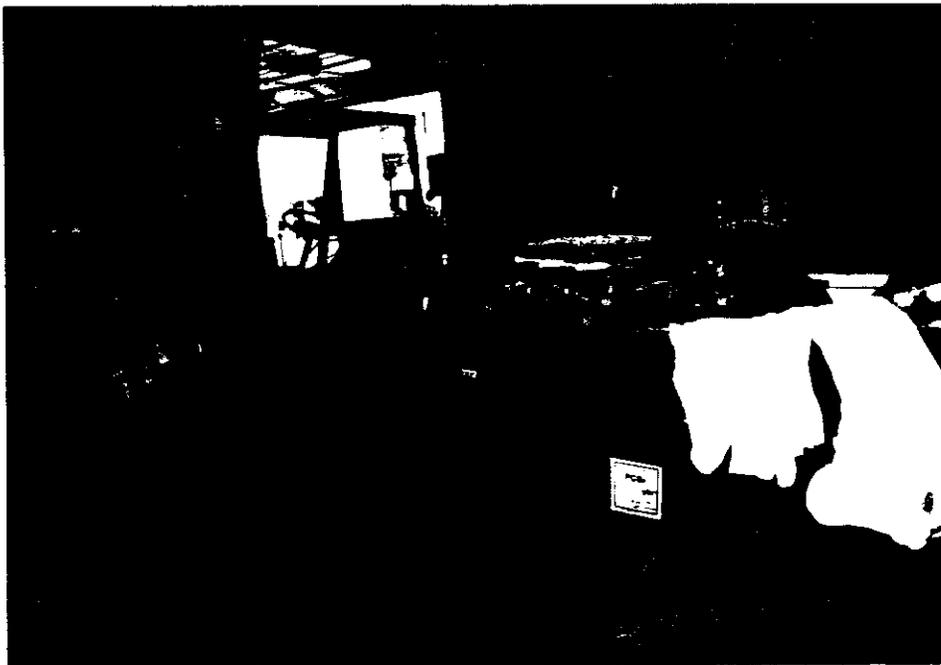
The undersigned understands that challenges to confidentiality claims may be made, and that claims are not likely to be upheld unless the information meets the following guidelines: (1) The company has taken measures to protect the confidentiality of the information and it intends to continue to take such measures; (2) The information is not, and has not been reasonably attainable without the company's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); (3) The information is not publicly available elsewhere; and (4) Disclosure of the information would cause substantial harm to the company's competitive position.

INSPECTOR SIGNATURE <i>George R. Carter</i>		CLAIMANT SIGNATURE <i>Benjamin N. Stokes</i>	
NAME GEORGE R. CARTER		NAME BENJAMIN N. STOKES	
TITLE EST II	DATE SIGNED 17 Oct. 1984	TITLE Sales Mgr.	DATE SIGNED Oct 17, 1984

APPENDIX B



1. Solid PCB waste in an undiked area of the building.



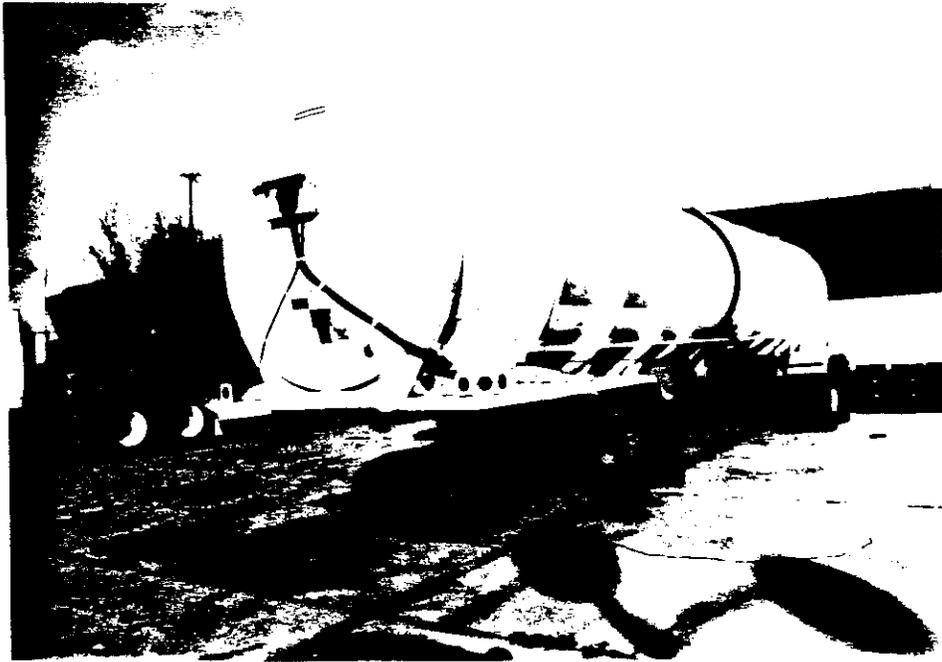
2. Two PCB transformers in a steel bin and a bin of capacitors.



3. Oil contamination below American Transformer Company Asbestol Transformer S/N 960361.



4. Large high-voltage PCB capacitor on the buildings north lot.



5. Tanker trailer containing 3000 gallons of PCB contaminated mineral oil.

APPENDIX C

APPENDIX D

(Uniform State Hazardous Waste Manifest)

Regional Drive, Box 1077
Concord, New Hampshire 03301
1-603-224-4006

TRANSFORMER

WASTE MANIFEST

TYPE or PRINT clearly.
Press Hard - Six Copies

PART A:		SITE ADDRESS		PHONE #	EPA ID #	STATE	GENERAL
Generator: Amoco Oil Responsible Individual: C. Null		Indianapolis Blvd. & 129th Whiting, Indiana					
Transporter:		577 Kennedy Rd. P.O. Box 2144 Akron, Ohio 44309		1-216-784-4632			178-4331
TRANSFORMER SERVICE (OHIO), INC.		577 Kennedy Road Akron, Ohio 44305		(216) 784-4632			id d bld 178-4331
Treatment/Storage or Disposal Facility: Transformer Service (Ohio), Inc.							

TO BE COMPLETED BY WASTE GENERATOR

PROPER US DOT SHIPPING NAME	US DOT HAZARD CLASS	UN NUMBER	FORM							QUANTITY #	UNITS				CONTAINERS NO.	Type - Drums, Trans. Etc.	EPA HAZ. CODE		EPA WASTE TYPE (CODE)			
			Solid	Liquid	Trans-Former	Capaci-tors	Lamp Ballast	Other	Gallons		Cu. Yds.	KGS	Other	T			D	O	O			
<input type="checkbox"/> Rq. Polychlorinated Biphenyls	ORM-E	UN-2315		X													T	D	O	O		
<input type="checkbox"/> Hazardous Waste, Empty, Last Contained PCBS, ORM-E, UN-2315	ORM-E	UN-2315 NA-9180			X									X	55 GAL DRUM		T	D	O	O		
<input type="checkbox"/> Hazardous Waste	ORM-E	UN-2315 NA-9180							10													
<input type="checkbox"/> Solvent, N.O.S.	Combustible Liquid	NA-1993		X													I	T	F	O	O	1 & 5

SPECIAL HANDLING INSTRUCTIONS INCLUDING CONTAINER EXEMPTION (i.e., IDENTIFICATION OF ADDITIONAL WASTES INCLUDED IN SHIPMENT OF A NONHAZARDOUS NATURE WHICH DO NOT HAVE TO BE MANIFESTED):

Shipment includes only those items completely filled in and checked at box under number above.
 ①. Use for flush liquid only.
 ②. Use for anything not listed - advise legal dept. first.
 ③. Use for transformers only if drained or liquid.
 ④. Use for soil (in drums, transformers, etc.), Lamp Ballast, Capacitors, Rags, Gloves, etc.

To be stored for ultimate disposal. Liquids and
 to be incinerated at SCA, Chicago, Ill. Solids to be buried
 at SCA, or other EPA approved landfill.

GENERATOR'S CERTIFICATION: This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, U.S. EPA, and the State. The wastes described above were consigned to the Transporter named, The Treatment, Storage or Disposal Facility can and will accept the shipment of hazardous waste, and has a valid permit to do so. I certify that the foregoing is true and correct to the best of my knowledge.

TO BE COMPLETED BY TRANSPORTER	GENERATOR'S SIGNATURE <i>C. Null</i>	TITLE <i>Env. Cont. Eng.</i>	DATE SHIPPED <i>8-9-84</i>	EXPECTED ARRIVAL DATE MONTH <i>8</i> DAY <i>9</i> YEAR <i>84</i>
	TRANSPORTER NO. 1 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT <i>Tom Nelson</i>	TRANSPORTER NO. 2 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT	DATE RECEIVED MONTH <i>8</i> DAY <i>9</i> YEAR <i>84</i>	DATE RECEIVED MONTH DAY YEAR
	TRANSPORTER VEHICLE I.D. NO. STATE NUMBER <i>04D027337096</i>	TRANSPORTER NO. 2 VEHICLE I.D. NO. STATE NUMBER	DATE RECEIVED MONTH DAY YEAR	DATE DELIVERED MONTH DAY YEAR
	TRANSPORTER SIGNATURE AND CERTIFICATION OF DELIVERY AND NON-TAMPERING WITH SHIPMENT			DATE RECEIVED MONTH DAY YEAR
TO BE FILLED OUT BY TSD FACILITY	TREATMENT STORAGE OR DISPOSAL FACILITY INDICATION OF ANY DIFFERENCES BETWEEN MANIFEST AND SHIPMENT OR LISTING OF REASONS FOR AND DISPOSITION OF REJECTED MATERIALS.			HANDLING METHOD 1 2 3 4
	TREATMENT, STORAGE OR DISPOSAL FACILITY SIGNATURE AND CERTIFICATION	TITLE	DATE RECEIVED MONTH DAY YEAR	

TRANSFORMER SERVICE (OHIO), INC.

TSI

WASTE MANIFEST

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Document No 0526

PART A:

NAME	SITE ADDRESS	PHONE #	E.P.A. ID # ① STATE ② FEDERAL
Generator: ARCO CHEMICAL	BEAVER VALLEY PLANT FRANKFORT RD PA.	774-1000	① ②
Responsible individual:			① ②
Transporter: TRANSFORMER SERVICE (OHIO), INC.	577 Kennedy Rd. P.O. Box 2144 Akron, Ohio 44309	1-216-784-4632	① ②
Treatment/Storage or Disposal Facility:			① ②

TO BE COMPLETED BY WASTE GENERATOR

PROPER US DOT SHIPPING NAME	US DOT HAZARD CLASS	UN NUMBER	FORM						QUANTITY #	UNITS				CONTAINERS		EPA HAZ. CODE	EPA WASTE TYPE (CODE)
			Solid	Liquid	Trans-Former	Capacitors	Lamp Ballast	Other		Gallons	Cu. Yds.	KGS	Other	NO.	Type — Drums, Trans. Etc.		
<input type="checkbox"/> Rq. Polychlorinated Biphenyls	ORM-E	UN-2315		X													
<input type="checkbox"/> Hazardous Waste, Empty; Last Contained PCBs, ORM-E, UN-2315	ORM-E	NA-9189	X	X				1									
<input type="checkbox"/> Hazardous Waste	ORM-E	NA-9189															
<input type="checkbox"/> Solvent, N.O.S.	Combustible Liquid	NA-1993		X													

SPECIAL HANDLING INSTRUCTIONS INCLUDING CONTAINER EXEMPTION (i.e., IDENTIFICATION OF ADDITIONAL WASTES INCLUDED IN SHIPMENT OF A NONHAZARDOUS NATURE WHICH DO NOT HAVE TO BE MANIFESTED).

Shipment includes only those items completely filled in and checked at box under number above.

- ① PCB liquids and PCB contaminated liquids only.
- ② Use for transformers only if drained or liquid.
- ③ Use for soil (in drums, transformers, etc.), Lamp Ballast, Capacitors, Rags, Gloves, etc.
- ④ Use for flush liquid only.
- ⑤ Use for anything not listed - advise legal dept. first.

Total Actual Weight _____ Kgs.
 Est. P.C.B. Actual Weight _____ Kgs.

GENERATOR'S CERTIFICATION. This is to certify that the above named materials are properly classified, described, packaged, marked and labelled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, U.S. EPA, and the State. The wastes described above were consigned to the Transporter named. The Treatment, Storage or Disposal Facility can and will accept the shipment of hazardous waste, and has a valid permit to do so. I certify that the foregoing is true and correct to the best of my knowledge.

GENERATOR'S SIGNATURE <i>X Mark Bites</i>	TITLE	DATE SHIPPED 7-1-84	EXPECTED ARRIVAL DATE MONTH 7 DAY 2 YEAR 84
TRANSPORTER VEHICLE I.D. NO. STATE NUMBER 0410 0409 015	TRANSPORTER NO. 1 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT <i>Ernest Radoski</i>	DATE RECEIVED	MONTH 7 DAY 1 YEAR 84
TRANSPORTER NO. 2 VEHICLE I.D. NO. STATE NUMBER	TRANSPORTER NO. 2 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT	DATE RECEIVED	MONTH DAY YEAR
TRANSPORTER SIGNATURE AND CERTIFICATION OF DELIVERY AND NON-TAMPERING WITH SHIPMENT			DATE DELIVERED MONTH DAY YEAR

TO BE COMPLETED BY TRANSPORTER

TREATMENT STORAGE OR DISPOSAL FACILITY INDICATION OF ANY DIFFERENCES BETWEEN MANIFEST AND SHIPMENT OR LISTING OF REASONS FOR AND DISPOSITION OF REJECTED MATERIALS. Received (1) DRUM SOLID WASTE - 534 LBS.	HANDLING METHOD
	1
	2
	3
	4

TO BE FILLED OUT BY TSD FACILITY

TREATMENT, STORAGE OR DISPOSAL FACILITY SIGNATURE AND CERTIFICATION <i>M.E. Piper</i>	TITLE <i>Asst Oper Mgr.</i>	DATE RECEIVED MONTH 7 DAY 3 YEAR 84
--	--------------------------------	--

Copy Distribution:

Part 1 - Generator; Part 2 - State EPA; Part 3 - Site; Part 4 - Hauler; Part 5 - State EPA; Part 6 - Generator

PART 2 - STATE EPA

(Uniform State Hazardous Waste Manifest)

Work Order # _____; Product Code: _____

Regional Drive, Box 1077
Concord, New Hampshire 03301
1-603-224-4006

TRANSFORMER SERVICE (OHIO), INC.

TSI

WASTE MANIFEST

577 Kennedy Road
P.O. Box 2144
Akron, Ohio 44309
216-784-4632

TYPE or PRINT clearly,
Press Hard - Six Copies

Document No 0475

PART A:		NAME	SITE ADDRESS	PHONE #	E.P.A. ID # ① STATE ② FEDERAL
Generator:	Ford Motor Co.	390 Fern Valley Rd.	Louisville, KY. 40232		①
Responsible Individual:					②
Transporter:	TRANSFORMER SERVICE (OHIO), INC.	577 Kennedy Rd. P.O. Box 2144 Akron, Ohio 44309		1-216-784-4632	① 173-HW ②
Treatment/Storage or Disposal Facility:	TRANSFORMER SERVICE (OHIO) INC.	577 Kennedy Road Akron, Ohio 44305			① ②

TO BE COMPLETED BY WASTE GENERATOR

PROPER US DOT SHIPPING NAME	US DOT HAZARD CLASS	UN NUMBER	FORM						QUANTITY #	UNITS				CONTAINERS		EPA HAZ. CODE	EPA WASTE TYPE (CODE)				
			Solid	Liquid	Trans-Former	Capacitors	Lamp Ballast	Other		Gallons	Cu. Yds	KGS	Other	NO.	Type - Drums, Trans. Etc.						
<input type="checkbox"/> Rq. Polychlorinated Biphenyls	ORM-E	UN-2315		X					30	X				1	55 GAL DRUM	T	D	O	O	O	
<input type="checkbox"/> Hazardous Waste, Empty; Last Contained PCBs, ORM-E, UN-2315	ORM-E	UN-2315			X											T	D	O	O	O	
<input type="checkbox"/> Hazardous Waste	ORM-E	UN-2010							25 LBS				X	1	55 GAL DRUM	T	D	O	O	O	
<input type="checkbox"/> Solvent, N.O.S.	Combustible Liquid	UN-2015		X												I.T	F	O	O	1 & 5	

SPECIAL HANDLING INSTRUCTIONS INCLUDING CONTAINER EXEMPTION (i.e., IDENTIFICATION OF ADDITIONAL WASTES INCLUDED IN SHIPMENT OF A NONHAZARDOUS NATURE WHICH DO NOT HAVE TO BE MANIFESTED).

Shipment includes only those items completely filled in and checked at box under number above.

- ①. PCB liquids and PCB contaminated liquids only.
- ②. Use for transformers only if drained or liquid.
- ③. Use for soil (in drums, transformers, etc.), Lamp Ballast, Capacitors, Rags, Gloves, etc.
- ④. Use for flush liquid only.
- ⑤. Use for anything not listed - advise legal dept. first.

TO BE STORED FOR ULTIMATE DISPOSAL. LIQUIDS TO BE INCINERATED AT ROLLINS, DEER PARK, TX., SCA, CHICAGO ILL. SOLIDS TO BE BURIED AT SCA, MODEL CITY, NY OR OTHER APPROVED EPA LANDFILL.

GENERATOR'S CERTIFICATION: This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, U.S. EPA, and the State. The wastes described above were consigned to the Transporter named. The Treatment, Storage or Disposal Facility can and will accept the shipment of hazardous waste, and has a valid permit to do so. I certify that the foregoing is true and correct to the best of my knowledge.

GENERATOR'S SIGNATURE	TITLE	DATE SHIPPED	EXPECTED ARRIVAL DATE
		6/7/84	MONTH 6 DAY 5 YEAR 84
TRANSPORTER VEHICLE I.D. NO.	TRANSPORTER NO. 1 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT	DATE RECEIVED	MONTH 6 DAY 7 YEAR 84
04HD027337096	<i>Tom Lebel</i>		
TRANSPORTER NO. 2 VEHICLE I.D. NO.	TRANSPORTER NO. 2 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT	DATE RECEIVED	MONTH DAY YEAR
TRANSPORTER SIGNATURE AND CERTIFICATION OF DELIVERY AND NON-TAMPERING WITH SHIPMENT		DATE DELIVERED	MONTH DAY YEAR

TREATMENT STORAGE OR DISPOSAL FACILITY INDICATION OF ANY DIFFERENCES BETWEEN MANIFEST AND SHIPMENT OR LISTING OF REASONS FOR AND DISPOSITION OF REJECTED MATERIALS.	HANDLING METHOD			
	1			
	2			
	3			

TREATMENT, STORAGE OR DISPOSAL FACILITY SIGNATURE AND CERTIFICATION	TITLE	DATE RECEIVED
<i>MS</i>	<i>ent open mgr</i>	MONTH 6 DAY 8 YEAR 84

(Uniform State Hazardous Waste Manifest)

Work Order # _____; Product Code: _____

Regional Drive, Box 1077
Concord, New Hampshire 03301
1-603-224-4006

TRANSFORMER SERVICE (OHIO), INC.
TSI
WASTE MANIFEST

577 Kennedy Road
P.O. Box 2144
Akron, Ohio 44309
216-784-4632

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Document No 0480

PART A:

NAME	SITE ADDRESS	PHONE #	E.P.A. ID # ① STATE ② FEDERAL
Generator: Hemlock Semi-Conductor Responsible Individual:	12304 Reddick Road Hemlock, Michigan	(517)642-5291	① M10095395216 ②
Transporter:	577 Kennedy Rd. P.O. Box 2144 Akron, Ohio 44309	Ext. 237 1-216-784-4632	① 172-UN ②
Treatment/Storage or Disposal Facility: TRANSFORMER SERVICE, (OHIO) INC.	577 Kennedy Road Akron, Ohio 44305	(216)784.4632	① ②

TO BE COMPLETED BY WASTE GENERATOR

PROPER US DOT SHIPPING NAME	US DOT HAZARD CLASS	UN NUMBER	FORM							QUANTITY #	UNITS				CONTAINERS		EPA HAZ CODE		EPA WASTE TYPE (CODE)	
			Solid	Liquid	Trans-Former	Capaci-tors	Loose	Lamp Ballast	Other		Gallons	Cu. Yds	KGS	Other	NO.	Type — Drums, Trans. Etc.				
① Rq. Polychlorinated Biphenyls	ORM-E	UN-2315		X																
② Hazardous Waste, Empty, Last Contained PCBs, ORM-E, UN-2315	ORM-E	UN-2315 NA-9189V			X				100	X				2	TRANS					
③ Hazardous Waste	ORM-E	UN-2315 NA-9189V																		
④ Solvent, N.O.S.	Combustible Liquid	UN-2315 NA-9189V		X																

SPECIAL HANDLING INSTRUCTIONS INCLUDING CONTAINER EXEMPTION (i.e., IDENTIFICATION OF ADDITIONAL WASTES INCLUDED IN SHIPMENT OF A NONHAZARDOUS NATURE WHICH DO NOT HAVE TO BE MANIFESTED).
Shipment includes only those items completely filled in and checked at box under number above.

① PCB liquids and PCB contaminated liquids only. ④ Use for flush liquid only.
② Use for transformers only if drained or liquid. ⑤ Use for anything not listed - advise legal dept. first.
③ Use for soil (in drums, transformers, etc.), Lamp Ballast, Capacitors, Rags, Gloves, etc.

TO BE STORED FOR ULTIMATE DISPOSAL. LIQUIDS TO BE INCINERATED AT ROLLINS, DEER PARK, TX. & SCA, CHICAGO, ILL. SOLIDS TO BE BURIED AT SCA, OR OTHER EPA APPROVED LANDFILL.

Total Actual Weight _____ Kgs.
Est. P.C.B. Actual Weight _____ Kgs.

GENERATOR'S CERTIFICATION: This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, U.S. EPA, and the State. The wastes described above were consigned to the Transporter named. The Treatment, Storage or Disposal Facility can and will accept the shipment of hazardous waste, and has a valid permit to do so. I certify that the foregoing is true and correct to the best of my knowledge.

GENERATOR'S SIGNATURE <i>R.P. [Signature]</i>	TITLE SUPERVISOR WASTE CONTROL	DATE SHIPPED 8-7-84	EXPECTED ARRIVAL DATE MONTH 8 DAY 24 YEAR 84
TRANSPORTER VEHICLE I.D. NO. OH0027337096	STATE OH	NUMBER 096	TRANSPORTER NO. 1 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT <i>[Signature]</i>
TRANSPORTER NO. 2 VEHICLE I.D. NO.	STATE	NUMBER	TRANSPORTER NO. 2 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT
TRANSPORTER SIGNATURE AND CERTIFICATION OF DELIVERY AND NON-TAMPERING WITH SHIPMENT			DATE RECEIVED MONTH DAY YEAR
			DATE DELIVERED MONTH DAY YEAR

TO BE COMPLETED BY TRANSPORTER

TREATMENT STORAGE OR DISPOSAL FACILITY INDICATION OF ANY DIFFERENCES BETWEEN MANIFEST AND SHIPMENT OR LISTING OF REASONS FOR AND DISPOSITION OF REJECTED MATERIALS.	HANDLING METHOD	
	1	
	2	
	3	
	4	
TREATMENT, STORAGE OR DISPOSAL FACILITY SIGNATURE AND CERTIFICATION	TITLE	DATE RECEIVED MONTH DAY YEAR

TO BE FILLED OUT BY TSD FACILITY

(Uniform State Hazardous Waste Manifest)

Work Order # _____ ; Product Code: _____

Regional Drive, Box 1077
Concord, New Hampshire 03301
1-603-224-4006

TRANSFORMER SERVICE (OHIO), INC.

TSI

WASTE MANIFEST

577 Kennedy Road
P.O. Box 2144
Akron, Ohio 44309
216-784-4632

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AM. TRANS
SCR# 9603 C1
439 lbs

Document No 0488

PART A:

NAME	SITE ADDRESS	PHONE #	E.P.A. ID #	STATE	FEDERAL
Generator: Transformer Service Responsible Individual: A.A. Melone	10115, 34th Street Chicago, Illinois 60650	312-636-7200	①		
Transporter: TRANSFORMER SERVICE (OHIO), INC.	577 Kennedy Rd. P.O. Box 2144 Akron, Ohio 44309	1-216-784-4632	②		
Treatment/Storage or Disposal Facility: Transformer Service, Inc. (Ohio)	577 Kennedy Road Akron, Ohio 44309	216-784-4632	③		

TO BE COMPLETED BY WASTE GENERATOR

PROPER US DOT SHIPPING NAME	US DOT HAZARD CLASS	UN NUMBER	FORM							QUANTITY #	UNITS				CONTAINERS		EPA HAZ CODE	EPA WASTE TYPE (CODE)				
			Solid	Liquid	Trans-Former	Capaci-tors	Lamp Ballast	Other	Gallons		Cu. Yds	KGS	Other	NO.	Type — Drums, Trans. Etc.	T		D	O	O	O	
<input type="checkbox"/> Rq. Polychlorinated Biphenyls	ORM-E	UN-2315		X						43	X				X	TRANS	T	D	O	O	O	
<input type="checkbox"/> Hazardous Waste, Empty, Last Contained PCBs, ORM-E, UN-2315	ORM-E	NA-9189			X					1					X		T	D	O	O	O	
<input type="checkbox"/> Hazardous Waste	ORM-E	NA-9189								44					X	DIN	T	D	O	O	O	
<input type="checkbox"/> Solvent, N.O.S.	Combustible Liquid	NA-1993		X													I,T	F	O	O	1 & 5	

SPECIAL HANDLING INSTRUCTIONS INCLUDING CONTAINER EXEMPTION (i.e., IDENTIFICATION OF ADDITIONAL WASTES INCLUDED IN SHIPMENT OF A NONHAZARDOUS NATURE WHICH DO NOT HAVE TO BE MANIFESTED).
Shipment includes only those items completely filled in and checked at box under number above.

①. PCB liquids and PCB contaminated liquids only. ④. Use for flush liquid only.
②. Use for transformers only if drained or liquid. ⑤. Use for anything not listed - advise legal dept. first.
③. Use for soil (in drums, transformers, etc.), Lamp Ballast, Capacitors, Rags, Gloves, etc.

Total Actual Weight _____ Kgs.
Est. P.C.B. Actual Weight _____ Kgs.

GENERATOR'S CERTIFICATION: This is to certify that the above named materials are properly classified, described, packaged, marked and labelled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, U.S. EPA, and the State. The wastes described above were consigned to the Transporter named. The Treatment, Storage or Disposal Facility can and will accept the shipment of hazardous waste, and has a valid permit to do so. I certify that the foregoing is true and correct to the best of my knowledge.

GENERATOR'S SIGNATURE <i>A.A. Melone</i>	TITLE <i>Project Engr.</i>	DATE SHIPPED <i>8-8-84</i>	EXPECTED ARRIVAL DATE MONTH <i>8</i> DAY <i>9</i> YEAR <i>84</i>
TRANSPORTER VEHICLE I.D. NO. <i>OH D027337096</i>	TRANSPORTER NO. 1 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT <i>[Signature]</i>	DATE RECEIVED MONTH <i>8</i> DAY <i>8</i> YEAR <i>84</i>	
TRANSPORTER NO. 2 VEHICLE I.D. NO.	TRANSPORTER NO. 2 SIGNATURE AND CERTIFICATION OF RECEIPT OF SHIPMENT	DATE RECEIVED	
TRANSPORTER SIGNATURE AND CERTIFICATION OF DELIVERY AND NON-TAMPERING WITH SHIPMENT		DATE DELIVERED	

TO BE COMPLETED BY TRANSPORTER

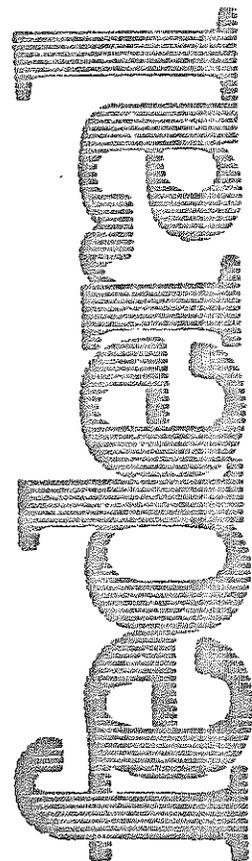
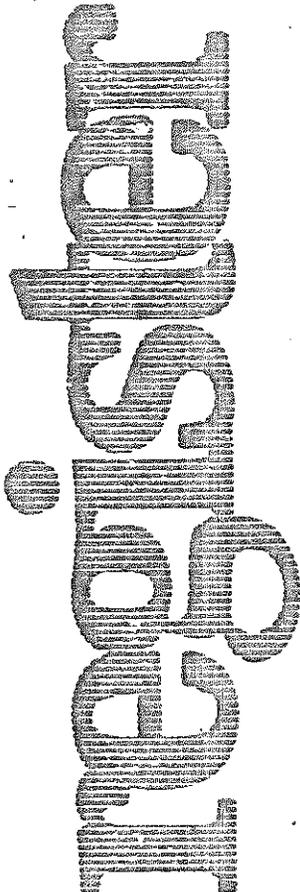
TREATMENT STORAGE OR DISPOSAL FACILITY INDICATION OF ANY DIFFERENCES BETWEEN MANIFEST AND SHIPMENT OR LISTING OF REASONS FOR AND DISPOSITION OF REJECTED MATERIALS.	HANDLING METHOD
	1
	2
	3
	4
TREATMENT, STORAGE OR DISPOSAL FACILITY SIGNATURE AND CERTIFICATION	TITLE
	DATE RECEIVED

TO BE FILLED OUT BY TSD FACILITY

Wednesday
September 10, 1980

Complainant's Exhibit 2

RECEIVED
DEC 17 1985
REGIONAL HEARING
U. S. ENVIRONMENTAL
PROTECTION AGENCY



Part V

Environmental
Protection Agency

Guidelines for Assessment of Civil
Penalties Under Section 16 of the Toxic
Substances Control Act; PCB Penalty
Policy

ENVIRONMENTAL PROTECTION AGENCY

(FRL 1801-6)

Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy

AGENCY: Office of Enforcement, Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of a policy for implementation of the Toxic Substances Control Act, with respect to the assessment of civil penalties under Section 16; interim guidance for the determination of penalties for violations of the PCB regulations.

SUMMARY: Section 16 of the Toxic Substances Control Act (TSCA or the Act) authorizes the Administrator of EPA to assess civil penalties for violations of the Act. On March 10, 1980, Jeffrey G. Miller, Acting Assistant Administrator for Enforcement, transmitted to the EPA Regional Administrators a document which implements an administrative civil penalty policy for TSCA. This document sets forth a general penalty assessment policy which will be supplemented by regulation-specific penalty assessment guidance. Together, these documents provide internal procedural guidelines to aid EPA personnel to assess appropriate penalties. They are not regulations. The penalty assessment policy establishes standardized definitions and applications of the statutory factors that the Act requires the Administrator to consider in assessing a penalty. It also provides a mechanism whereby Agency personnel may, within specified boundaries, exercise discretion in negotiating consent agreements, and otherwise adapt the proposed penalty to the exigencies of special circumstances.

Separate guidances will apply the penalty system to specific regulatory and statutory provisions. These guidances will be developed on a continuing as-needed basis.

On April 24, 1980, Richard D. Wilson, deputy Assistant Administrator for General Enforcement, transmitted to the EPA Regional Administrators the first of the regulation specific penalty policies. This document consisted of interim guidance for the determination of penalties for violations of the PCB regulations.

The TSCA civil penalty policy and the PCB penalty policy were effective on March 10, 1980 and April 24, 1980, respectively, the dates these policies were issued to the Regional Offices. Although the Agency is not required to

publish these documents, EPA is doing so in order to give them the wide circulation that publication will provide.

The full text of the TSCA civil penalty policy, and the PCB penalty policy, with the appropriate transmittal memoranda, appear below in the "Supplementary Information" section.

FOR FURTHER INFORMATION CONTACT: Peter J. Niemiec, Attorney-Advisor, Pesticides and Toxic Substances Enforcement Division (EN-342), 401 M St., SW., Washington, D.C. 20460, (202) 755-9404.

SUPPLEMENTARY INFORMATION: The documents appearing below were transmitted to the EPA Regional Administrators on March 10, 1980, and April 24, 1980, respectively. The "Technical Support Document" referred to in the TSCA civil penalty document has not been reproduced, but is available upon request from the EPA address above.

Dated: July 7, 1980.

Jeffrey G. Miller,
Acting Assistant Administrator for
Enforcement.

TSCA Civil Penalty System

Introduction

The Toxic Substances Control Act (TSCA), passed by Congress and signed into law in 1976, provides for increased regulation of chemical substances and mixtures. The Environmental Protection Agency is charged with carrying out and enforcing the requirements of the Act and any rules promulgated under the Act.

Section 16 of the Act provides for civil and criminal penalties for violations of TSCA or TSCA rules. Civil penalty amounts may range up to \$25,000 per violation, with each day that a violation continues constituting a separate violation. Civil penalties are to be administratively imposed, after the person is given a written notice and the opportunity to request a hearing. There is a right to review in the United States Courts of Appeals after the penalty has been imposed by the Administrator.

Section 16 of TSCA requires that a number of factors be considered in assessing a civil penalty, as follows:

In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, and history of prior such violations, the degree of culpability, and such other matters as justice may require.

The purpose of the general penalty system is to assure that TSCA civil

penalties be assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated; and that persons will be deterred from committing TSCA violations.

Scope of the Civil Penalty System

The penalty system described in this document provides the general framework for civil penalty assessment under TSCA. It establishes standardized definitions and applications of factors the Act requires the Administrator to consider in assessing a penalty. As regulations are developed, specific penalty guidelines will be developed adopting in detail the application of the general penalty system to the new regulation. These specific guidelines will generally be issued when enforcement strategies are issued for each new regulation.

Note.—This document does not discuss whether assessment of a civil penalty is the correct enforcement response to a given violative condition. Rather, this document focuses on determining what the proper civil penalty should be if a decision has been made that a civil penalty is the proper enforcement remedy to pursue.

Brief Description of the System

The general civil penalty system is designed to assign penalties for TSCA violations in accordance with the statutory requirements of Section 16. Penalties are determined in two stages: (1) Determination of a "gravity based penalty" (GBP), and (2) adjustments to the gravity based penalty.

To determine the gravity based penalty, the following factors affecting a violation's gravity are considered:

- The "nature" of the violation,
- The "extent" of environmental harm that could result from a given violation, and
- The "circumstances" of the violation.

These factors are incorporated on a matrix which allows determination of the appropriate gravity based penalty.

Once the gravity based penalty has been determined, upward or downward adjustments to the penalty amount are made in consideration of these other factors:

- Culpability,
- History of such violations,
- Ability to pay,
- Ability to continue in business, and
- Such other matters as justice may require.

Civil Penalty System and Its Application

This section describes in detail the

general civil penalty system, how specific penalty guidelines will be developed and applied, and the reasoning behind the development of the system.

The Penalty Factors

The Act requires the consideration of eight named factors in any penalty assessment, as well as "other factors as justice may require."

The first four factors—nature, circumstances, extent, and gravity—relate to the violation. Under the penalty system these four factors are charted on a matrix which yields the Gravity Based Penalty (GBP). This matrix is a constant throughout the penalty system. As will be seen below, however, the specific penalty guidelines will affect into which category along each axis of the matrix the violation will fall.

Once a GBP figure is reached, several adjustment factors are applied:

- An upward or downward adjustment may be made for particularly culpable or non-culpable conduct. An upward adjustment of up to 100% may be made where there is a history of such a violation.

- Two other adjustments (not specifically required by the Act, but authorized under the "as justice may require" language of § 16) are to recover cleanup costs paid by the United States, and to reduce or eliminate any financial or competitive advantage gained by the violator as a result of his failure to follow the Act, or its regulations. Other case-by-case adjustments may also be warranted under the "as justice may require" language.

- The final statutory adjustment factors are the violator's ability to pay and the effect on the violator's ability to continue to do business. For several reasons we have combined the concepts involved in these factors onto one "ability to pay" factor. This factor will often act as a limit on the amount of penalty assessed, even where other factors indicate a higher penalty is warranted.

Calculation of the Gravity Based Penalty

The gravity based penalty (GBP) is found on the following matrix:

Circumstances (probability of damages)	Extent of potential damage		
	A major	B significant	C minor
High range:			
1	\$25,000	\$17,500	\$5,000
2	20,000	13,500	3,000
Mid range:			
3	15,000	10,000	1,500
4	10,000	6,000	1,000
Low range:			
5	5,000	3,000	500
6	2,000	1,200	200

NOTE.—Significant violations are assessed at 60-80% of major violations, while minor violations are assessed at 20% and 15% of major violations for levels 1 and 2, and 10% for levels 3-6.

The GBP incorporates nature, extent, circumstances, and gravity as follows:

1. *Nature*. The "nature" factor, as all factors in the penalty system, is used in accordance with its commonly understood meaning: "The essential character of a thing; quality or qualities that make something what it is; essence" (Webster's New World Dictionary).

In the context of penalty assessment, this factor indicates which specific penalty guideline should be used to determine appropriate matrix levels of "extent" and "circumstances" (of environmental harm surrounding the violation). Thus, the nature (essential character) of a violation is best defined by the set of requirements violated, such as the PCB rule, or the premanufacture notification requirement. Since each TKCA section, rule, or other appropriate group of requirements will have a separate specific penalty guideline that will include criteria for assigning violations to the several levels of "extent" of potential harm, and probability of harm, the specific tailoring of these operational criteria for each section or rule ensures that penalties assessed will reflect the nature of the violation.

Also incorporated in the concept of "nature" is whether the violation is of a *chemical control, control-associated data gathering, or hazard assessment* nature:

Chemical control: Chemical control regulations are aimed at minimizing the risk presented by a chemical substance, by placing constraints on how it is handled. Sections 6, 7, 12, 13 and sub-sections 5(e), and 5(f) authorize a wide variety of chemical control actions, from

labeling requirements to total bans on manufacture. These requirements are variously imposed by rulemaking, administrative order, court injunction, or by the Act itself.

Control-associated data gathering: Control-associated data gathering requirements are the recordkeeping and/or reporting requirements associated with a chemical control regulation. These requirements enable the Agency to evaluate the effectiveness of the regulation, and to monitor compliance.

Hazard assessment: Hazard assessment requirements are used to develop and gather the information necessary to intelligently weigh and assess the risks and benefits presented by particular chemical substances, and to impose chemical control requirements when appropriate. The requirements include those of premanufacture notification under § 5, testing under § 4, and reporting and recordkeeping under § 8.

As discussed in the next two sections, the "nature" of the violation will have a direct effect on the measure used to determine which "extent" and "circumstances" categories are selected on the GBP matrix.

2. *Extent*. "Extent" is used to take into consideration the degree, range, or scope of the violation. The matrix provides three levels for measuring extent:

- Level A (Major):
—Potential for "serious" damage to human health or for major damage to the environment.
- Level B (Significant):
—Potential for "significant" amount of damage to human health or the environment.
- Level C (Minor):
—Potential for a lesser amount of damage to human health or the environment.

A number of factors affect into which level of "extent" a particular violation fits. The specific application of these factors depends in large degree on the specific penalty system's treatment of a particular violation. For example, the specific penalty system will not only provide guidance for PCBs in general, but also for the type of PCB violation.

Chemical control: For a chemical control violation (e.g., rules for storage

and disposal of PCBs), the quantity of the regulated substance involved might be the principal basis for categorizing extent. In other words, a violation involving under 10 pounds of a given substance might be Level C, 10 to 100 pounds Level B, and over 100 pounds Level A.¹ In the development of specific guidelines, environmental impact data and other analyses developed in support of the chemical control rule making will generally be the basis for determining "extent" levels.

Control-associated data-gathering: For control-associated data gathering regulations, the quantity of regulated substance involved in the recordkeeping will be used as the indicator of the extent of the violation. For example, not reporting the whereabouts of 1,000 pounds of PCBs is more serious than not reporting one pound. In general, the quantity measures used to define the "extent" of such a violation will be the same as those used to define the "extent" categories of the control violation with which it is associated. As with chemical control rules, factors other than quantity may be used when appropriate to indicate the "extent" of potential damage.

Hazard assessment: Hazard assessment data-gathering regulations require a different approach to make an "extent" determination. Unlike chemical control and control-associated data-gathering regulations, the degree of danger or "hazard" presented by the substance in question may not be known. Indeed, this lack of knowledge is the principle reason for the data-gathering. The measure of "extent" of harm will focus on the goals of the given hazard assessment regulation, and the types of harm it is designed to prevent. For example, a § 4 test violation will be of Level A extent if it "seriously" affects the validity of a test on a substance which is manufactured in large quantities, with lesser violations treated accordingly, whereas manufacturing a chemical without submitting a premanufacture notification form 90 days in advance, could either be treated as (1) always being of Level A or, (2) varying in level of "extent" according to the volume illegally manufactured. Thus, a great number of judgments must be made in the formulation of the specific penalty policy.

3. **Circumstances.** "Circumstances" is used in the penalty policy to reflect on the probability of the assigned level of

¹ Other criteria, such as number of people exposed or potentially exposed, could have been utilized here, but (1) those factors are difficult and expensive to quantify for individual violations, and (2) these factors are already considered, to some extent, under "circumstances."

"extent" of harm actually occurring. In other words, a variety of facts surrounding the violations as it occurred are examined to determine whether the circumstances of the violation are such that there is a *high, medium, or low* probability that damage will occur. The matrix provides the following levels for measuring circumstances (probability factors):

Levels 1 and 2 (High): The violation is likely to cause damage.

Levels 3 and 4 (Medium): There is a significant chance that damage will result from the violation.

Levels 5 and 6 (Low): There is a small likelihood that damage will result from the violation.

The probability of harm, as assessed in evaluating circumstances, will always be based on the risk inherent in the violation *as it was committed*. In other words, a violation which presented a high probability of causing harm when it was committed (and/or was allowed to exist) must be classified as a "high probability" violation and *penalized* as such, even if through some fortuity no actual harm resulted in that particular case. Otherwise some who commit dangerous violations would be absolved. Similarly, when harm has actually resulted from a violation, the "circumstances" of the violation should be investigated to calculate what the probabilities were for harm occurring at the time of the violation. The theory is that violators should be penalized for the violative conduct, and the "good" or "bad" luck of whether or not the proscribed conduct *actually* caused harm should *not* be an overriding factor in penalty assessment. However, the responsibility for clean-up attaches without regard to the probability of harm (see Adjustment Factor 3, Government Clean-up Costs). As with "extent," the specific penalty guidelines are an essential tool in characterizing the circumstances of a violation.

Chemical control: With chemical control violations, probability is determined primarily by physical factors which affect the chance of improper exposure to the chemical's effects. For example, certain types of improper storage of PCBs are more likely than others to result in release of PCBs into the environment, and actual dumping of PCBs is virtually certain to do some harm. Criteria for assessing the probability of harm resulting from a violation will whenever possible be based on information developed in support of the chemical control rule.

Data-gathering and hazard assessment: A slightly different approach is taken to evaluate circumstances of data-gathering

violations. The effect on the Agency's ability to implement or enforce the Act is the principal circumstance to be considered. Thus, the matrix levels for measuring circumstances (probability) for data-gathering and hazard assessment violations are as follows:

Levels 1 and 2 (High)—Violations which seriously impair the Agency's ability to monitor (data-gathering) or evaluate chemicals (hazard assessment).

Levels 3 and 4 (Medium)—Violations which impair the Agency's ability to monitor or evaluate chemicals in a less than critical way.

Levels 5 and 6 (Low)—Violations that impair the Agency's ability to monitor or evaluate chemicals in a less than important way.

Under these criteria, a violation of a Section 4 test standard (serious enough to make a study totally unreliable) has a higher probability of resulting in harm to the public through its effect on the Agency and would probably be Level 1 or 2, while late submission of a required report might be only a Level 5 or 6 violation.

Whenever possible, the specific penalty system will attempt to classify certain types of violations according to probability of damage. For example, certain types of violations of a disposal rule might always involve a high probability of damage. But other types of violations might involve such a large range of probability of harm that each case would have to be evaluated individually. In the latter case, the specific penalty guideline will include criteria to guide the evaluation of each violation. It is difficult to estimate the probability of harm presented by given situation, particularly in light of the many variables that make up "circumstances." However, "circumstances" can be evaluated for guideline purposes by comparing situations. For example, it is clear that, as a general rule, there is a greater probability of a falsified laboratory test leading to *actual damage*, than to have such damage resulting from minor errors in test report formatting.

The specific guidelines will also address the range of probabilities within each of the six "circumstances" classifications. For some violations, any probability of causing harm of over 10% might be in the "high" range, while other violations might be classified quite differently. One particular factor that may affect probability determinations is the length of time during which the violation presents a threat to health or the environment. Dumping PCBs in an unapproved landfill may not cause harm immediately but may inevitably cause harm as it leeches into nearby

groundwater. But where only temporary proper storage is intended, and removal is planned, the probability of harm would be decreased accordingly.

1. *Gravity*. "Gravity" refers to the overall seriousness of the violation. As used in this penalty system, "gravity" is a dependent variable, i.e., the evaluation of "nature," "extent," and "circumstances" will yield a dollar figure on the matrix that determines the gravity based penalty.

Gravity Adjustment Factors

The gravity based penalty reflects the seriousness of the violation's threat to health and environment. The Act also requires the Agency to consider certain factors in assessing the violator's conduct: Culpability, history of such violations, ability to pay, and ability to continue in business. In addition, the Act authorizes the Agency some discretion to consider "other factors as justice may require." Under this last authorization, two additional factors are considered and balanced: the cost of the violation to the government, and the benefits received by the violator due to non-compliance. In order to compute penalty adjustments in a logical fashion, these adjustment factors are considered in the following sequence:

- (1) Culpability;
- (2) History;
- (3) Cost to the government;
- (4) Benefits from non-compliance; and
- (5) Ability to pay/ability to continue in business.

1. *Culpability*. Since the law only requires the Agency to consider the culpability of the violator as an adjustment factor, the existence of a violation can be established without relying solely on this "blameworthiness" factor. In other words, the Agency may pursue a policy of strict liability in penalizing for a violation, though some allowance must be made based on the extent of the violator's culpability.² Under this penalty system, the gravity based penalty may be increased or decreased, or may remain the same depending on the violator's culpability."

The two principal criteria for assessing culpability are (a) the violator's *knowledge* of the particular TSCA requirement, and (b) the degree of the violator's *control* over the violative condition.

² There are certain circumstances where an "act of God" or some other circumstance totally out of a company's control may not result in assessment of a violation (no legal liability). For example, where PCBs are properly stored, and a plane crashes into the storage facility, causing a spill, there will probably be no violation.

(a) *The violator's knowledge*: The lack of knowledge of a particular requirement would not necessarily reduce culpability, since the Agency has no intention of encouraging ignorance of TSCA and its requirements. The test under TSCA will be whether the violator knew or should have known of the relevant TSCA requirement or of the general hazarousness of his actions. This latter point will allow the Agency to find a violator fully culpable even if he has no knowledge of a particular regulatory requirement when he does have knowledge that the particular substance he was dealing with was hazardous. For example, lack of knowledge of the PCB rules would not reduce culpability if the violator had knowledge that the dumping of PCBs creates a serious threat to human health. Thus, a reduction in the penalty based on lack of knowledge could only occur where a reasonably prudent and responsible person in the violator's position would not have known that the conduct was hazardous or violative of TSCA. It is anticipated that such situations and attendant reductions will be rare.

(b) *Degree of control over the violation*: There may be situations where the violator may be less than fully responsible for the violation's occurrence. For example, another company may have had some role in creating the violative conditions and thus must also share in the legal responsibility for the resulting consequences. Or an employee whose conduct caused the violation may have been disobeying his employer's instructions. Such situations would probably warrant some reduction in the penalties.

(c) *Initial culpability determination*: For penalty assessment purposes, three levels of culpability have been assigned, as follows:

Level I: The violation is willful, i.e., the violator intentionally committed an act which he knew would be a violation or would be hazardous to human health or the environment.

—Adjust the GBP Upward 25%.

Level II: The violator either had sufficient knowledge to recognize the hazard created by his conduct, or significant control over the situation to avoid committing the violation.

—No adjustment to the GBP.

Level III: The violator lacked sufficient knowledge of the potential hazard created by his conduct, and also lacked control over the situation to prevent occurrence of the violation.

—Adjust the GBP downward 25%.

It is anticipated that most cases will present Level II culpability. Level I situations, in many instances, could be treated as criminal violations (and often

will be so treated). However, the decision to file a criminal action has no effect on civil penalty calculations and is a totally separate issue.

(d) *Attitude of the violator*: In assessing the violator's "attitude," the Agency will look at the following factors: Whether the violator is making "good faith" efforts to comply with the appropriate regulations; the promptness of the violator's corrective actions; and any assistance given to EPA to minimize any harm to the environment caused by the violation.

Since "attitude" is already reflected in Level I culpability, and since it is largely irrelevant to Level III culpability, this adjustment will really only be utilized where "knowledge" and "control" result in a Level II culpability finding. While Level II normally yields no reduction or increase in penalty, the attitude of the violator may justify a penalty adjustment of up to 15% of the GBP in either direction. Objective evidence, such as statements or actions of the violator, should be used to justify such adjustments.

2. History of prior such violations.

The gravity based penalty matrix is designed to apply to "first offenders." Where a violator has demonstrated a similar history of "such violations," the Act requires the penalty to be adjusted upward. The need for such an upward adjustment derives from the violator's not being sufficiently motivated to comply (deterred from non-complying) by the penalty assessed for the previous violation, either because of economic factors consciously analyzed by the firm, or because of negligence. Another reason for penalizing repeat violators more severely than "first offenders" is the increased enforcement resources that are spent on the same violator.

The Agency's policy is to interpret "prior such violations" as referring only to prior violations of TSCA, even though it would seem "such" could refer to any violations of EPA statutes, or remedial statutes in general (e.g., OSHA, CPSC). However, since Congress did not explicitly state it wanted the Agency to go beyond TSCA in determining violation history, the Agency is using this narrower interpretation. The penalty system distinguishes between previous TSCA violations in general, and previous violations of the same set of regulatory requirements.

The following rules apply in evaluating history of prior such violations:

(a) In order to constitute a prior violation, the prior violation must have resulted in a *final order*, either as a result of an uncontested complaint, or as a result of a contested complaint which

is finally resolved against the violator. Violations litigated in the Federal courts, under the Act's imminent hazard (§ 7), specific enforcement and seizure (§ 17), and criminal (§ 16(b)) provisions, are part of a violator's "history" for penalty assessment purposes, as are violations for which civil penalties have been previously assessed. However, a notice of non-compliance does not constitute a "prior such violation", since no violation has formally been found, and no opportunity to contest the notice has been given.

(b) To be considered a "prior such violation", the violation must have occurred within five years of the present violation. This five year period begins when the prior violation becomes a final order. Beyond five years, the prior violative conduct becomes too distant to require compounding of the penalty for the present violation.

(c) Generally, companies with multiple establishments are considered as one when determining history. Thus, if one establishment of a company commits a TSCA violation, it counts as history when another establishment of the same company, anywhere in the country, commits another TSCA violation. However, two companies held by the same parent corporation do not necessarily affect each other's history if they are in substantially different lines of business, and they are substantially independent of one another in their management, and in the functioning of their Boards of Directors. In the case of wholly- or partly-owned subsidiaries, the violation history of a parent corporation shall apply to its subsidiaries, and that of the subsidiaries to the parent.

(d) If the prior such violation is of a different TSCA provision or regulation, the penalty should be upwardly adjusted 25 percent for a first repetition and 50 percent for a second repetition of the violation. If the prior "such" violation is of the same, or closely similar provision or regulation, the penalty should be upwardly adjusted 50 percent for the first repetition and 100 percent for the second repetition.

For these purposes, a prior such violation is the "same or closely related" if it is similar to the present violation. Each TSCA rule or regulation is considered a separate entity for "closely related" purposes. Thus the identical provision does not have to be violated both times for this higher adjustment to be made. For example, two separate unlawful disposals of PCBs may be "closely similar" if the PCBs were unlawfully dumped on the highways in the first instance, and in the second instance, PCBs of over 500 ppm

were burned in a facility that did not comply with the PCB incinerator standards.

The specific guidelines will give some guidance on what violations are "closely similar" to others, and may set up a sliding scale of upward adjustment percentages rather than the 50 percent or 100 percent figures provided here.

3. *Government clean-up costs.* An adjustment factor not specified in the statute, but which the Agency feels "justice . . . require[s]," is reimbursement to the government for funds expended to investigate, clean-up, or otherwise mitigate the effects of a violation.

Generally, the clean-up expense of a violator is to be borne by the violator as a necessary cost of violation in addition to any civil penalty assessed. The government may seek a Federal district court injunction under §§ 7 or 17 to require the violator to clean-up, but there will almost certainly be situations where the government will have to clean-up the violation to quickly alleviate any hazards created. Where these latter situations happen, the government could probably file a non-statutory suit in Federal district court to recover funds which it expended, but it could even more easily assess these costs, when they are sufficiently low, in an administrative proceeding under § 16, particularly where a § 16, particularly where a § 16 action is going to be filed anyway.

The major limitation to seeking reimbursement of government investigatory and clean-up costs is the limit of \$25,000 for each violation. However, since each day a violation continues constitutes a separate violation for which a \$25,000 penalty may be assessed, in many instances clean-up and investigatory costs can be recovered where the violation is a continuing one. However, where a penalty would be in the area of \$25,000 for the violation even before government investigatory and clean-up costs are considered, a § 16 action would be of little value in recovering these additional costs.

In adjusting the penalty, the government investigatory and clean-up cost should be added to the penalty calculated thus far. Where the total penalty under this method exceeds \$25,000, the penalty should be cut back to \$25,000. As will be discussed later, this type of situation lends itself to utilization of the continuing violation provisions of § 16.

It is important to note that consideration of government investigatory and clean-up costs in the

penalty assessment is not intended to in any way affect the right of the government to recover investigatory and clean-up costs in a separate court action. A violator may argue that investigatory and clean-up costs have been abrogated by settlement of the penalty. Thus, if there is a reasonable possibility that the Agency will seek to recover such costs in a separate suit, this factor should not be utilized in assessing the § 16 penalty. Thus the investigatory and clean-up costs will not be included twice in calculating a penalty for a violation.

4. *Gains from noncompliance.* Another adjustment factor which "justice . . . require[s]" is that the violator not profit from its violative acts. TSCA's ability to prevent harm to public health and the environment is severely weakened whenever an economic incentive exists to violate the law. The penalty system attempts to eliminate, or at least reduce, these economic incentives, by adding to the base penalty an estimate of the economic gains obtained by the violator as a result of his noncompliance.

Among such economic gains would be money saved by not investing in new equipment, or by not following more costly operating procedures, or profits gained through the sale of illegal products. Removing such gains not only protects the public by deterring violations, but also prevents violators from gaining unfair competitive advantage over those who are complying with the law. For example, a company which manufactures a new chemical without submitting a premanufacture notice, pursuant to § 5, may gain a strong competitive advantage over another company who intends to manufacture the same chemical, but follows the § 5 procedure. The violator should be penalized at least to the extent of the economic gains achieved through his noncompliance. Any other result would put a premium on noncompliance.

The specific penalty guidelines should, where possible, indicate the types of economic gains from noncompliance, and include either standard estimates of such gains (e.g., the purchase price of required new equipment or facilities), or a procedure for estimating the gain. In cases where economic gains resulted from the company's failure to make required capital and operation and maintenance expenditures, those gains must be calculated in accordance with the Agency's September 27, 1978, "Technical Support Document" for computing civil penalties under the April 11, 1978, Civil

Penalty Policy. The resulting economic savings figure must be reviewed by the Civil Penalty Policy Panel for consistency with that policy. In many instances, the GBP will be sufficiently high without adjustment for this factor. In other situations where there is no economic motive or benefit from noncompliance, or when the cost of cleaning up a violation outweighs any economic benefits received, this adjustment factor need not be applied.

5. Ability to pay and ability to continue in business. (a) *Usage of these terms.* The Act lists "ability to pay" and "ability to continue in business" as two adjustment factors, but for the purposes of the penalty system the distinctions between the two are so narrow and artificial that they are treated as one. In making this determination it was considered that "ability to pay" might be limited (in the extreme sense) to such indicators as the market value of the violator in liquidation, the profits accrued by the firm over a given time period, the net sales or income generated over a given time period, the value of cash and other liquid assets held by the firm, and the value of all liquid assets plus borrowable cash. Essentially, however, a firm can pay up to the point where it can no longer do business.⁵ However, it is evident that Congress, by inserting these two factors into the Act, for most cases did not intend that TSCA civil penalties present so great a burden as to pose the threat of destroying, or even severely impairing, a firm's business.

Measuring a firm's ability to pay a cash penalty, without ceasing to be operable, can be extremely complex. The focus is on the solvency of the firm, rather than performing extensive financial analysis of a firm, which would take an unreasonable effort on the part of both the Agency and the firm. It is believed that a year's net income, as determined by a fixed percentage of total sales, will generally yield an amount which the firm can afford to pay. The average ratio of net income to sales level for U.S. manufacturing in the last five years is approximately five percent (1978 *Economic Report of the President*). Since small firms are generally slightly less profitable than average sized firms, and since small firms are the ones most likely to have difficulty paying TSCA penalties, the guideline is reduced to four percent.

Even where the net income is negative, four percent of gross sales should still be used as the "ability to pay" guideline, since companies with high sales will be presumed to have sufficient cash to pay penalties even where there have been net losses.

For purposes of calculating the ability to pay, figures for the current year and the prior three years should be averaged. Four percent of the average sales will serve as the guideline for whether the company has the ability to pay.

(b) *Application of ability to pay.* While it would be possible for an inspector to utilize Dunn and Bradstreet, or to inquire during the course of the inspection to ascertain sales data, the firm should be presumed to have the ability to pay at the time the complaint is issued. This is preferable not only for purposes of administrative convenience, but also because many firms will not have their sales information in Dunn and Bradstreet or similar publications, and because the Act indicates that financial and sales data are only subject to inspection when "the nature and extent of such data are described with reasonable specificity in the written notice (of inspection)." § 11(b)(2). This singling out by Congress of these factors indicates that they are not to be routinely asked for in every inspection, and since any alleged violator can raise the issue of ability to pay in his answer to the complaint, both the Agency and the inspected firm will save time and resources by using this approach. Of course, if such information can easily be obtained prior to or during the inspection, there is no harm in doing so.

If the firm raises the issue of inability to pay in its answer, or in the course of settlement discussions, the four percent guideline discussed above should be the model to follow. The firm should be asked to bring appropriate documentation to indicate what their sales have been, such as tax returns, financial statements, etc. If the proposed penalty exceeds four percent of total sales, the penalty may be reduced to an affordable level.

There may be some cases where a firm argues that it cannot afford to pay even though the penalty as adjusted does not exceed four percent of sales. A variety of factors, too complex to discuss here, might require such further adjustment to be made. In complex cases, the agency may need to rely on a management division economist or an accountant to analyze the firm's ability

to pay and, on a case-by-case basis, to further reduce the proposed penalty.⁶

3. *Other factors at justice may require.* While two "other factors" have been incorporated as adjustment factors, other issues might arise, on a case-by-case basis, which should be considered in assessing penalties. Among these factors are:

- *Money spent by the violator in cleaning up or otherwise mitigation the harm caused by the violation.* Normally there should be no reduction for these costs, since it is part of the cost of violation. However, there may be instances where the cost of penalty, plus cost of cleanup, are excessive for the particular violation, so that some credit for these expenditures should be given.

- *New ownership for "history of violations."* It may be unfair in some cases to burden new ownership with the previous owner's history.

- *National defense.*

- *Foreign policy.*

- *Conflict or ambiguity vis-a-vis other Federal statutes and regulations (e.g., OSHA, USDA, DOE).*

- *Environmentally beneficial expenditure.* Circumstances may arise where a violator will offer to make expenditures for environmentally beneficial purposes above and beyond those required by law, in lieu of paying civil penalties. The Agency, in penalty actions in the U.S. District Courts under the Clean Air and Water Acts, has determined that crediting such expenditures is consistent with the purpose of civil penalty assessment. Although civil penalties under TSCA are administratively assessed, the same

⁵The analyst must keep several particular points in mind. First, small firms often report no taxable income, and instead provide a return of their owner/operators through salaries and benefits such as automobiles, medical plans, and so forth. When reconstructing the firm's cash flow, owner/operators should receive as payment for services only that amount which they could obtain for providing similar services in the general labor market. The rest of their compensation should properly be assigned to profit for the company. The second point to keep in mind in examining tax returns is that small, privately-owned plants often have several corporations set up to handle various aspects of the business. If one or more of these corporations is culpable for some part of the TSCA violation, the tax returns for all involved corporations should be examined and a combined cash flow prepared. Once the firm's historical cash flows have been assembled, the analyst must make some assessment of the likely future path of the company. In so doing, the analyst must consider the firm's ability to earn cash from its operations, its ability to liquidate assets to meet penalty amounts (and still remain in business), and its ability to raise additional cash from lenders and its owners. The analyst must judge these factors without expending excessive resources on the analysts. Such a process can be assisted through discussions with individuals knowledgeable in the particular industry, such as local bankers, consultants, and others, if appropriate.

⁶Technically, a firm would often be able to pay even if imposing a penalty would cause it to file for bankruptcy, since a reorganization might still leave the business in operation.

⁷Henceforth "ability to pay" will be used to include "ability to continue in business".

rational applies. This adjustment, which constitutes a credit against the actual penalty amount, will normally be discussed only in the course of settlement negotiations. The criteria for acceptable credits are discussed in detail in section VIII of the April 11, 1978 Civil Penalty Policy. Before proposed credit amounts can be incorporated into a settlement, the complainant must assure himself that the penalty (with credit adjustment) is consistent with the April 11, 1978, Civil Penalty Policy, and that the company has not already received credits in another enforcement action for the same environmentally beneficial expenditures. The settlement agreement incorporating such an adjustment should make clear what the actual penalty assessment is, after which the terms of the reduction should be spelled out in detail and in a clearly enforceable manner.

• **Significant-minor borderline violations.** Occasionally a violation, while of significant extent, will be so close to the borderline separating minor and significant violations that the penalty may seem disproportionately high. In this situation, additional reduction of up to 25% off the GBP may be applied before the other adjustment factor are considered.

Continuing Violations

Since the Act provides not only that civil penalties may be assessed up to \$25,000 for each violation, but that each day a violation continues constitutes a separate violation for which additional penalties may be assessed, there is a potential for very large penalties to be assessed in many situations. In some cases, such large penalties will be appropriate for continuing violations, while for others, such as late inventory reporting, assessing an additional penalty for each day of violation would yield a penalty assessment for greater than the violation merits. The specific penalty guidelines will discuss the types of continuing violations which should be assessed on a per-day basis. This discussion should indicate how criteria such as this will be applied, e.g., which continuing violations should never be penalized on a per-day basis, and which should usually or always be so penalized.

When a penalty is assessed on a per-day basis for a continuing violation, care must be taken to assure that the adjustment factors, "government clean up costs", and "economic benefits from non-compliance" are spread over the entire penalty, since these figures are calculated by looking at the entire violative situation. For example, if a continuing violation lasted four days

and generated \$40,000 in government clean-up costs, these \$40,000 in costs should be added to the daily penalties (although each day would still be limited to a maximum \$25,000 penalty).

Continuing violations are distinguished from multiple violations and violations which occur several separate times. These latter violations will generally be separately assessed.

Settlement

This guidance does not prescribe a specific percentage guideline for penalty reductions in the course of settlement. While, as a general rule, penalties may be altered in the course of settlement, there should always be some substantive reason given, which is to be incorporated in any settlement agreement and consent decree and final order for any penalty reduction. Other aspects of settlement are discussed in the context of particular penalty factors.

Designing and Applying a Specific Penalty Guidance

Designing a Specific Penalty Guidance

The specific penalty guidance, which will usually be developed as part of the enforcement strategy for a particular regulation, will provide the detailed information needed to fit particular violations in the overall civil penalty system. Each specific penalty guidance will address:

- To the extent possible, the types of violations that can occur;
- How to evaluate the nature (i.e., whether chemical control, or information gathering) of a violation;
- How to determine and classify the extent of possible harm posed by a given violation;
- Special considerations in using the adjustment factors, particularly including means of estimating government clean-up costs and economic benefits from non-compliance;
- How and when to utilize the concept of multi-day violations;
- Any "other matters as justice may require" which may particularly apply to the given regulation; and
- Anything else necessary to effectuate enforcement of the regulation and the Act's penalty policy.

Applying a Specific Penalty Guidance

This section briefly summarizes the steps necessary to calculate a proposed penalty assessment.

Step 1: Utilizing the specific penalty guidances, determine the nature, extent, and circumstances of the violation.

Step 2: Find the appropriate extent and circumstances levels on the gravity based penalty matrix to determine the gravity based penalty (GBP).

Step 3: Determine the percentage adjustment for culpability, if any.

Step 4: Determine the percentage adjustment for history, if any.

Step 5: Add the adjustment percentages from steps 3 and 4 and apply the GBP. If the amount is in excess of \$25,000, reduce the penalty to \$25,000.

Step 6: Multiply the step 5 figure by the number of days of violation.

Step 7: Apply government cleanup costs adjustment, if applicable. Add to the step 6 figure.

Step 8: Apply economic gains from non-compliance adjustment, if applicable. Add to the step 6 figure.

Step 9: Make other adjustments "as justice may require."

Step 10: Issue formal complaint proposing the penalty.

Step 11: Discuss settlement any time before a final administrative law judge's decision (unless the complaint is not contested and becomes final as a matter of law). If applicable, determine violator's ability to pay. If appropriate, reduce penalty to amount violator can afford to pay. Penalties may be reduced as a condition of settlement.

Step 12: Issue Final order.

Civil Penalty Assessment Worksheet

Name of Respondent: _____
Address of Respondent: _____

- (1) Complaint I.D. Number: _____
(2) Date Complaint Issued: _____
(3) Date Answer Received: _____
(4) Date Default Order Sent: _____
(5) Date Consent Agreement Signed: _____
(6) Date Final Order Sent: _____
(7) Date Remittance Received: _____

1. Gravity Based Penalty (GBP) from matrix, \$_____.
2. Percent increase or decrease for culpability, %_____.
3. Percent increase for violation history, %_____.
4. Add lines 2 and 3, \$_____.
5. Multiply GBP by percentage total on line 4, \$_____.
6. Add lines 1 and 5 (subtract line 5 from line 1 if negative percentage), \$_____.
7. Enter line 6 amount or \$25,000, whichever is less, \$_____.
8. Multiply line 7 by the number of days of violation, \$_____.
9. Government clean-up costs, if any, \$_____.
10. Economic gains from non-compliance, if appropriate, \$_____.
11. Add lines 8 through 10, \$_____.
12. Total of other adjustments as justice may require, \$_____.
13. If line 12 represents a net increase to the penalty add line 12 to line 11, \$_____.

or
If line 12 represents a net decrease to the penalty subtract line 12 from line 1, \$_____.

Note—Line 13 should be the proposed penalty for a given violation. This procedure is repeated for each violation.

FCR Penalty Policy

Introduction

Background

On March 10, 1980, the Agency issued a TSCA Civil Penalty Policy memorandum. That document

implements a system for determining penalties in administrative actions brought pursuant to Section 16 of the Toxic Substance Control Act (TSCA). Under that system, penalties are determined in two stages: (1) Determination of a "gravity based penalty" (GBP), and (2) adjustments to the gravity based penalty.

To determine the gravity based penalty, the following factors affecting a violation's gravity are considered:

- The "nature" of the violation,
- The "extent" of environmental harm that could result from a given violation, and
- The "circumstances" of the violation.

These factors are incorporated on a matrix which allows determination of the appropriate gravity based penalty.

Once the gravity based penalty has been determined, upward or downward adjustments to the penalty amount are made in consideration of these other factors:

- Culpability,
- History of such violations,
- Ability to pay,
- Ability to continue in business, and
- Such other matters as justice may require.

The TSCA Civil Penalty Policy system provides a framework for the development of individual penalty guidances for each rule promulgated under TSCA. This document sets forth Agency policy for the use of the GBP Matrix to assess penalties for specific violations of the regulations regarding polychlorinated biphenyls (PCBs). These regulations appear at 43 FR 7150 (Feb. 17, 1978) and 44 FR 31514 (May 31, 1979). The document also will explain where

multiple violations should be charged, and how penalties should be determined for such violations.

This policy is being issued as an interim guidance for the determination of penalties for violations of the PCB regulations. The Agency will review its experience with this policy before issuing a final penalty policy for the PCB rule. The final policy will also address any special considerations which the Agency decides should be used to apply the adjustment factors (e.g., removing benefits from non-compliance.)

A summary of the policy appears immediately below the applicability section. That summary is followed by a detailed explanation of the policy.

Applicability

This policy is immediately applicable and should be used to calculate penalties for all administrative actions concerning PCBs instituted after the date of the policy, regardless of the date of violation. Pending cases should be reviewed to determine whether the penalty calculated under this policy is lower than the penalty in the civil complaint. If this policy yields a lower penalty, an amendment to the complaint should be made to substitute the lower penalty. This policy should not be used to raise penalties in existing actions. No case should be settled for an amount higher than the penalty which this policy would yield.

Summary of the Policy

The gravity based penalty (GBP), based on the nature, extent, and circumstances of the violation, is found from the following matrix:

Table I

Circumstances (probability of damages):		Extent of potential damage		
		A	B	C
		Major	Significant	Minor
High range	1	\$25,000	\$17,000	\$5,000
	2	\$0,000	\$3,000	\$1,000
Mid range	3	\$5,000	\$0,000	\$1,000
	4	\$0,000	\$0,000	\$0,000
Low range	5	\$0,000	\$0,000	\$0,000
	6	\$0,000	\$0,000	\$0,000

Since the purpose of the PCB regulation is to prevent additional PCBs from entering the environment, all violations of it are chemical control violations by nature. Thus, the nature is the same for all violations. To use the GBP matrix to determine a penalty for a PCB violation, it is necessary to determine the extent and circumstances of each violation.

Extent

The extent is determined by the amount and concentration of the PCB material involved. The total weight of PCB material should be ascertained for each violation of the rule. That weight should then be reduced, depending on the concentration, as follows:

Table II

Concentration Reductions

- (1) 50-499 ppm—70% reduction.
- (2) 500-9,999 ppm—50% reduction.
- (3) 10,000-99,999 ppm—20% reduction.
- (4) over 100,000 ppm—no reduction.

Exceptions: This reduction step does not apply in the following circumstances:

- (i) Violations of 40 CFR 701.10(d) (road oiling, coating, dust control);
- (ii) Where the violation consists of failing to test to qualify for an authorization; or
- (iii) For solids, where the unit of measurement is other than the actual weight.

Extent categories: The total weight figures, reduced by the concentration, if applicable, are used to determine extent, as follows:

Table III

- (A) Major—5000 kg. or more.
- (B) Significant—1000 kg. more, but less than 5000 kg.
- (C) Minor—less than 1000 kg.

Alternative measures: If weight is not available, use these alternative measures:

Table IV

(A) Major:

Liquid

- (a) 1100 gallons or more, or
- (b) a contaminated area of 750 square feet or more, or
- (c) 300 or more large capacitors.

Non-liquid

- (a) 100 or more fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors; or
- (b) 25 or more drained transformers, or 100 or more empty drums which once contained PCB fluid, or any other PCB solids having a volume of 750 cubic feet or more.

(B) Significant:

Liquids

- (a) 225 gallons or more but less than 1100 gallons, or
- (b) A contaminated area of 150 square feet or greater, but less than 750 square feet, or
- (c) 60 large capacitors or more, but less than 300 large capacitors.

Non-liquids

- (a) 20 or more, but less than 100 fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors.
- (b) 5 or more, but less than 25, drained transformers, or more than 20, but less than 100, empty drums which once contained PCB fluids, or any other solid having a volume of 150 or more, but less than 750 cubic feet.

(C) Minor:

Liquids

- (a) Less than 220 gallons, or
- (b) A contaminated area of less than 150 square feet.
- (c) Less than 60 large capacitors.

Non-liquids

- (a) Less than 20 fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors; or
- (b) Less than 5 drained transformers, 20 fifty-five gallon drums which previously contained PCB fluids, or any other PCB solid having a volume of approximately 150 cubic feet.

Spills into water, food or feeds. Any PCB disposal which results in contamination of surface or ground water, or food or feeds is *always* major in extent.

Circumstances (Probability for Damage)

To determine which level on the circumstances axis to use, classify each violation of the regulation into one of these eight categories of violation:

- (1) Disposal
- (2) Marking
- (3) Storage
- (4) Manufacturing
- (5) Processing
- (6) Distribution
- (7) Use
- (8) Recordkeeping

After classifying the violations, determine the level on the circumstances axis from the following chart:

Table V

- High range:**
- Level one:**
- (1) Improper disposal.
 - (2) Manufacturing
- Level two:**
- (1) Processing.
 - (2) Distribution.
 - (3) Improper use.
- Medium range:**
- Level three:**
- (1) Major storage violations.
 - (2) Major recordkeeping violations, disposal facilities.
 - (3) Major marking violations.
- Level four:**
- (1) Major recordkeeping violations, use and storage facilities.
- Low range:**
- Level five:**
- (1) Failure to date PCB items placed in storage.
 - (2) Minor storage violations.
 - (3) Minor marking violations.
- Level six:**
- (1) Minor recordkeeping violations.
 - (2) Failure to use "No PCBs" label as required.

Finding the GBP penalty. The extent and circumstances, as determined above, will determine a penalty amount on the GBP Matrix, Table I. This figure should be entered on line one (1) of the

Civil Penalty Assessment Worksheet, (hereinafter, "worksheet") attached as Appendix A. The other penalty factors, such as culpability, ability to pay, and others, should be applied in the manner described in the TSCA Civil Penalty Policy.

Multiple Violations

Assess multiple violations against a single violator in any of the following circumstances:

- (1) The violations fall into more than one violation category;
- (2) The violations are in substantially different locations; or
- (3) There is evidence that the violation has been committed on repeated occasions or has continued for more than one day.

If multiple violations are charged because of evidence of repeated or continuing conditions, the penalty will normally be calculated using the proportional penalty calculation, which appears in Table VI, below. However, the Agency can exercise its discretion either to charge for only one day, or to charge on a straight per day or per violation basis (GBP X number of days or violations), depending on factors such as substantial actual harm, the unusual nature of risk presented, or other unique circumstances.

Table VI**Proportional Penalty Calculation**

Step 1: Find the total amount of PCB materials involved. If more than two times the major extent category, (more than 10,000 kg.) go to step 2. If less than two times the minimum amount in the major extent category (less than 10,000 kg.), use this amount to get a penalty from the GBP Matrix. Divide the penalty by the number of days¹ and enter on line one of the worksheet (Appendix A).

Step 2: Divide the amount from step one by the minimum amount in the major extent category (5000 kg). (Round fractions to one decimal place.)

Step 3: Multiply the amount from step two by the dollar amount from the GBP Matrix major extent category. This is the total GBP charged.

Step 4: Divide the amount from step 3 by the number of days or violations involved. Enter this daily amount on line one of the worksheet (Appendix A).

Explanation of Policy**Nature**

Since the purpose of the PCB regulation is to prevent further introduction of PCBs into the environment, this regulation is a

¹It should be noted that if the proportional penalty calculation is based on repeated violations, then the calculation at line 9 of the worksheet should represent the number of violations rather than the number of days.

chemical control regulation, as defined by the TSCA Civil Penalty Policy. Accordingly, most violations of this regulation are chemical control violations. The only exception would be violations of the recordkeeping requirements, which are control-associated data-gathering in nature. The Agency has taken this into account in designing a specific policy for PCB penalties. The definitions of the "extent" and "circumstances" categories below reflect the nature of these violations.

Extent

Because the PCB regulations are chemical control and control-associated data-gathering in nature, the greater the amount of PCB containing material (hereinafter, "PCB material") involved in a particular violation, the more likely it is that harm will result from the violation of the PCB rules. For this reason, the amount of PCB material involved in a particular incident will determine whether the major, significant, or minor extent category should be used in deriving a penalty from the GBP Matrix. Since the concentration of the PCB material involved in an incident will also affect the potential for harm, this factor must also be considered in determining which extent category is applicable to a particular violation.

Amount of Material Involved

The most obvious measure of the amount of PCB material involved in a violation is weight. Therefore, the weight of the PCB material involved in a violation is the primary determinant of the extent category to be used to find the GBP. To be consistent with the three extent categories of the GBP Matrix (i.e. major, significant, and minor), three weight classes have been chosen to define the extent of a PCB violation. These classes are as follows:

- (A) Major: 5000 kilograms or more.
- (B) Significant: Between 1000 and 5000 kilograms.
- (C) Minor: Less than 1000 kilograms.

The minor category weight was defined as less than 1000 kilograms because this is slightly less than the amount of PCBs in an average transformer. Since a major portion of the PCBs in existence are in transformers, it is essential that these items be disposed of properly. Accordingly, the Agency defined the minor category as an amount of PCBs less than the contents of an average transformer, so that most transformers would fall in the significant category. The Agency believes this will encourage the proper disposal of transformers.

The major category weight was selected at 50 kg. kilograms. This is slightly less than the contents of five average size transformers, and corresponds to the fact that the penalty for a major improper disposal is five times larger than that for a minor improper disposal; that is, \$25,000 versus \$5,000. (As will be seen below, improper disposal is always level one on the circumstances axis.) The significant category is defined as 1,000 kg. or greater, but less than 5,000 kg. This definition is a direct consequence of the definition of the other two categories.

Units Other Than Weight

The Agency realizes that there will be situations where the number of kilograms of PCBs involved is not easily determined. In many cases, other units of measurement (e.g. gallons, cubic feet, etc.) may be more easily obtained. Additionally, some violations will involve non-liquid PCB material, usually as a result of liquid PCBs being spilled into or cleaned up by absorbent solid materials. Such solids will often weigh considerably more than liquid PCBs. If the penalty for such solids were based on the weight categories outlined above, the result, in the Agency's opinion, would be inequitable.

For these reasons, the Agency has decided to define each of the three extent categories by several different units of measurement. Although these units of measurement are not necessarily equal, it is the Agency's opinion that they are generally comparable.

(A) Major:

Liquid

- (a) 1100 gallons or more, or
- (b) A contaminated area of 750 square feet or more, or
- (c) 300 or more large capacitors

Non-liquid

- (a) 100 or more fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors, or
- (b) 25 or more drained transformers, or 100 or more empty fifty-five gallon drums which once contained PCB fluid, or any other PCB solid having a volume of 750 cubic feet or more.

(B) Significant:

Liquids

- (a) 220 gallons or more, but less than 1,100 gallons, or
- (b) A contaminated area of 150 square feet or greater, but less than 750 square feet, or
- (c) 60 large capacitors or more, but less than 300 large capacitors.

Non-liquids

- (a) 20 or more but less than 100, fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors.
- (b) 5 or more, but less than 25, drained transformers; or more than 20, but less than 100, empty fifty-five gallon drums which once contained PCB fluids, or any other solid having a volume of 150, but less than 750, cubic feet.
- (c) *Minor:*

Liquids

- Less than 220 gallons, or
- (b) A contaminated area of less than 150 square feet, or
- (c) Less than 60 large capacitors.

Non-liquids

- (a) Less than 20 fifty-five gallon drums containing contaminated soil, rags, debris or small capacitors; or
- (b) Less than 5 drained transformers, 20 fifty-five gallon drums which previously contained PCB's fluids, or any other PCB solid having a volume of approximately 150 cubic feet.

The figures above are based on the assumption that the density of PCB fluids is 10 lbs. per gallon, which is the average density of high concentration PCB's. If the actual density of the fluid involved is known, then the actual density should be used to convert the volume of fluids involved into kilograms. The figure for capacitors is based on an average of 35 pounds of fluid in the most popular models of large capacitors.

Because it is often difficult to determine the amount of PCB's in a solid, the Agency did not attempt to define the extent categories for solids by trying to estimate how much solid PCB material had the same amount of PCB's as the average PCB transformer. Instead, the Agency tried to maintain the same economic incentives for solids as for liquids. Thus, the decision to make 20 drums the cut off point for the upper limit of the minor category is based on an estimate that the cost of disposing of twenty 55 gallon drums, either empty or containing PCB solids, is approximately the same as the cost of incinerating the liquid in one transformer.

In certain instances, the use of the different units of measurement discussed above would result in a particular violation falling into more than one category. For example, fluid PCB material having a density less than that of average high concentration PCB's may result in 250 gallons weighing as little as 900 kilograms. Using the gallon measurements, this would be a significant violation; but using the kilogram measurement, this would be a minor violation. In such instances, the penalty should be based on the category determined by the actual weight, in kilograms, of the material involved, if

this information is known. If the weight is not known, the gallon measure should be used.

Exceptions to Extent Category

Spills into water. Where any improper disposal results in a contamination of surface or ground water, the extent will always be considered major. Since it is virtually impossible to remove all PCB's from surface or ground water once a spill occurs, environmental harm is almost assured. Because of this clean-up problem, such a spill creates a substantial risk of human exposure, either directly from the water, or through the food chain. For these reasons, the Agency believes that spills into surface or ground water are always major incidents, regardless of the amount and concentration.

Spills into food and feed. Where any improper disposal results directly in contamination of food or feed, the extent is always major. If such spills are not quickly detected, they will result in direct human exposure. Even if the problem is detected before humans eat the contaminated food, it is likely that the cost of finding and destroying the contaminated products will be high. Thus, the Agency believes such incidents should always be considered major in extent.

Concentration Adjustments

The Agency recognizes that the concentration of the PCB materials is a relevant factor to consider in determining the amount of damage done from a violation of this regulation. Obviously, a spill of high concentration PCB's puts more contaminants into the environment than a spill of low concentration PCB's. Nonetheless, because PCB's can be toxic at very low concentrations, a spill of a large amount of low concentration PCB material could cause widespread harm. Thus, a system which would require the total weight of PCB material involved to be reduced in direct proportion to the concentration of that material would severely undermine the regulatory scheme.

The problem is illustrated by the following hypothetical: Someone spills 2,000,000 lbs. (or 909,000 kgs.) of fluid containing PCBs at a concentration of 1,000 parts per million (ppm). If, in calculating the penalty, the total weight of the fluid was reduced by the direct proportion of the concentration, less than 1,000 kilograms of PCBs would be involved for the purpose of calculating a penalty. As a result, this incident would be considered minor in extent, and the violator would not be fined more than \$5,000. A penalty as small as this would not reflect the potential for harm to the

environment and would create an enormous economic incentive for people to improperly dispose of PCBs at low concentrations, contrary to the intent of the regulations.

To account for the effect of the concentration of PCB liquids in determining the extent of a violation, and at the same time establish a system which does not severely hinder the agency's program, the following system has been developed. To determine the extent of probable damage for a particular violation, the total amount of PCB material involved in an incident should be reduced by the percentages which appear below:

- (1) 50-499 ppm—70% reduction.
- (2) 500-9,000 ppm—50% reduction.
- (3) 10,000-99,999 ppm—20% reduction.
- (4) 100,000 ppm or above—no reduction.

Thus, in the hypothetical quoted above, where 2,000,000 lbs. of PCB fluid at a concentration of 1,000 ppm was disposed of, the total amount would be reduced by 50%. Thus, the amount of fluids for determining the extent of the probable harm would be 1,000,000 lbs., or 454,545 kilograms.

Exceptions to Concentration Adjustment Calculation

These concentrations adjustment factors are not used in the following circumstances:

Waste oil. The use of waste oil that contains detectable concentrations of PCBs as a sealant, coating, or dust control agent, which is prohibited by 40 CFR 761.10(d), is one situation where the concentration reduction would not apply. The agency chose to prohibit these uses whenever any detectable level of PCBs were present because any such use of PCBs is likely to result in widespread environmental and health damage. Thus, allowing any reduction of the amount of PCBs used by virtue of low concentration would be contrary to the regulatory scheme.

Failure to test. The concentration reduction also does not apply where the violation is the failure to test liquid required to be tested; for example, the contents of a heat transfer system that has contained PCBs, 40 CFR 761.31(d)(1). In such cases, the risk created by the violation is that the fluid will be high concentration PCBs, and that this material will continue in use. Thus, the Agency feels that these persons should not obtain a fortuitous benefit when the liquid is finally tested and found to be of some lower concentration.

Alternative measure for solids. Finally, the concentration adjustment should not be used when the PCB material is measured by one of the

alternative measures for solids which appear in Table IV. These alternative measures were chosen to maintain economic incentives for proper disposal. The cost of disposal of such materials is not dependent on the concentration of the PCBs in them. Accordingly, to allow adjustments for lower concentration might remove the economic incentives to dispose of these materials properly.

Circumstances

The other variable for determining a penalty from the GBP Matrix is the circumstances of the violation, also called the probability of damages. The TSCA Civil Penalty System established three ranges of probability of damages, high, medium, and low. Each of these ranges in turn has two different levels, for a total of six levels of probability of damages.

Explanation of Categories

Because there are many ways the PCB regulation can be violated, and because each of these violations could occur in so many different environmental contexts, it is virtually impossible to assess in advance all the possible factors that logically might have some impact on the probability of damages for a particular PCB violation. It would be even more difficult to try to determine, in advance, how all of these factors would interact in any particular situation. For this reason, the Agency believes it is appropriate to group the different types of PCB violations, assess the probability for harm resulting from each type of violation, and then assign that type of violation to one of the levels on the circumstances axis of the GBP Matrix.

For the purposes of assessing the probability of damages from a particular type of PCB violation, all the possible violations of the PCB rule can be grouped into eight categories, as follows:

- (1) Disposal
- (2) Marking
- (3) Storage
- (4) Manufacturing
- (5) Processing
- (6) Distributing
- (7) Use
- (8) Recordkeeping

Immediately below is a table assigning the different categories of PCB violations to the levels of probability of damages on the GBP Matrix. After the table, the reasons for the assignment of each category of violation to a level of probability of damages is explained.

High Range

Level one:

(1) Improper disposal of PCBs. This includes operating disposal facilities at

conditions which do not meet the requirements of the regulations. It also includes any uncontrolled discharge of PCBs, e.g., leakage from a stored container.

(2) Manufacturing of PCBs without an exemption or in violation of any condition of an exemption.

Level two:

(1) Processing PCBs without an exemption or in violation of any condition of an exemption.

(2) Distribution in commerce of PCBs without exemption or in violation of any condition of an exemption.

(3) Improper use of PCBs or using PCBs in violation of any condition of authorization. For example, this includes removing a coil from a PCB transformer for servicing, and the failure to test a heat transfer system that once contained PCBs.

Medium Range

Level three:

(1) Major storage violations. A major storage violation means a situation where a significant portion of spilled material would not be contained. Examples of such situations are storage in areas with no curbing, non-continuous or no flooring, or unsealed floor drains. Storage of PCBs in an area with permeable flooring or curbing would also be a major storage violation.

(2) No records or major record keeping violations at disposal facilities, including high efficiency boilers and landfills. Major record keeping violations would include the failure to keep data on incinerator operating parameters.

(3) Major marking violations. A major marking violation is a situation where there is no indication to someone who is unfamiliar with the situation that PCBs are present.

Level four:

(1) No records or major recordkeeping violations at facilities that use or store PCBs. Major recordkeeping violations would include the absence of data on PCB transformers, and the absence of records on any transfer of PCBs from the site.

Low Range

Level five:

(1) Failure to date PCB items placed in storage.

(2) Minor storage violations. Examples of these are small cracks in walls, no roof, or small cracks in otherwise impervious floor or curbing.

(3) Minor marking violations. These are situations in which all the requirements of the rule have not been followed, but there are sufficient indications to notify someone unfamiliar with the situation that PCBs are present and enable them to identify PCB items. An example would be the failure to mark a transport vehicle containing PCB items which are themselves marked.

Level six:

(1) Minor recordkeeping violations. Examples of such violations are small errors in the numbers of large capacitors, small errors in number of containers, or the omission of the date of transfer on PCBs.

(2) Failure to label small capacitors, fluorescent light ballasts, or large low voltage capacitors with a "no PCBs" label as required by 40 CFR 761.20(g).

Explanation for Assignment of Levels of Probability of Damage

Level one. This level contains the two violations which the Agency considers most serious, manufacturing and improper disposal. Manufacturing is extremely serious because it creates new PCBs. In so doing, it enlarges the risk of environmental and human exposure, places additional burdens on disposal facilities, and increases the cost of protecting the public from this chemical. Improper disposal creates grave risks of harm to the environment or human health, because it assures the entry of more PCBs into the environment. This is contrary to the main thrust of the PCB regulation, which was to prevent further contamination of the environment with PCBs. Thus, these violations are considered to be the most serious, and provide the standard against which the other PCB violations are measured.

Level two. The violations which were placed in level two on the GBP Matrix were those which the Agency considered to be the most likely to result in improper disposal. For example, processing or distribution of PCBs without an exemption or in violation of a condition of an exemption is likely to result in spillage, leakage, volatilization of PCBs. Similarly, improper use of PCBs will, at worst, result in PCB contamination of a wide range of products (as when they are used in a leaking hydraulic system), or at best will result in an increased risk of improper disposal.

Level three. This level includes major storage violations, major recordkeeping violations at disposal facilities, and major marking violations. The Agency regards storage violations, such as the lack of a floor, to be somewhat less dangerous than the risk incurred by use, processing, or distribution of PCBs without an exemption. The latter are very likely to result in improper disposal. However, storage violations will only cause damage where there is an accident, or a leak, which probably would be unintentional. Nonetheless, if such events occurred, the possibility for widespread contamination would be high.

The lack of records, or inadequate records, at disposal facilities similarly does not present as severe a risk of improper disposal as processing of PCBs without an exemption. However, such a violation severely reduces the Agency's ability to enforce the requirements of the regulation as they pertain to the operators of such facilities. Accordingly, the absence of adequate records at

these facilities removes a significant incentive for compliance, thus substantially increasing the risk of improper disposal.

Major marking violations have been defined as those situations where someone investigating a situation would not know that PCBs were present or would be unable to tell which items contained PCBs. Such a situation creates a high risk of improper disposal. However, if the other portions of the PCB regulation are observed, records would be kept on PCB materials, thereby creating at least some chance that improper disposal would not occur. For this reason, this violation is not considered as risky as improper use or distribution. However, where major marking is associated with other violations, such as recordkeeping, the increased risk will be reflected by an additional penalty.

Level four. Level four includes major recordkeeping violations at facilities that use or store PCBs. Major recordkeeping violations at facilities that use or store PCBs present a somewhat lower risk than major recordkeeping violations at disposal facilities. Since these facilities do not themselves dispose of the PCBs, there is a greater chance that the PCBs will be identified as such before they are actually disposed of. However, the fact that these violations substantially hinder the Agency's ability to trace the movement of PCB's means that they make improper disposal more likely. For this reason, the Agency considers this violation to be significant.

Level five. Included in this category are the failure to date PCB items placed in storage, minor storage violations, and minor marking violations. The failure to date PCB items placed in storage simply means that the items may be stored longer than is presently permitted by the rule. Assuming these items are otherwise treated in accordance with the rule, the lengthy storage will simply increase, by a small amount, the risk of an accidental spill. Similarly, minor marking violations are, by definition, violations where there is sufficient marking to alert someone investigating the situation that there are PCBs present. Thus, the likely ill effect of such violations is simply that, in emergency situations, the length of time required to discover the presence of PCBs might be increased somewhat. This should not significantly increase the amount of damage done. Finally, minor storage violations are those in which any spilled material will be substantially contained. Thus, the amount of damage that could

result from such violations would be relatively small.

Level six. Level six represents those violations which the Agency believes pose the least risk of causing harm. It includes only minor recordkeeping violations, and failure to label with the "no PCBs" mark. In the case of minor recordkeeping violations, such violations, although they might make enforcement somewhat more difficult, should not seriously impair the Agency's enforcement efforts. The failure to label with the "no PCB" mark will only result in the disposal of certain items more carefully than necessary, thereby increasing the cost of compliance with the regulation.

The risk to the environment and human health in this case is minimal. Moreover, the Agency believes that there are already substantial economic incentives for manufacturers to comply with this labeling requirement, since their customers would probably be anxious to obtain equipment bearing such a label.

Using the GBP Matrix To Find a PCB Penalty

In order to determine a penalty for a specific PCB violation, the following steps should be followed:

Step 1: Determine which category of violation is involved (i.e., disposal, marking, storage, manufacturing, processing and distribution, use, or recordkeeping). If more than one violation category is involved, repeat the calculation in steps 2 through 8 for each violation category.

Step 2: Find which level the violation fits on the circumstances axis of the GBP Matrix.

Step 3: Calculate the total amount of PCBs involved in the violation. If there are several materials involved which fall into different concentration ranges, do a separate calculation for each concentration.

Step 4: Reduce the amounts in step 3 by the concentration adjustment. (Be sure to note the exceptions to this step).

Step 5: If different concentration ranges are present, add up the figures from step 4.

Step 6: Determine which extent category (major, significant, or minor) is applicable to the amount from step 5.

Step 7: Use the level from step 2 and the extent from step 6 to locate the penalty on the GBP Matrix (E.g., Level 3, significant is \$10,000).

Step 8: Enter the amount from step 7 on line 1 of the Civil Penalty Assessment worksheet attached to the TSCA Civil Penalty Policy.

Use that worksheet to complete the calculation of the penalty accounting for factors such as culpability, history of violations, etc.

Example

An inspection of X Company reveals that the following items are all stored for disposal in a room with an earthen floor:

2 transformers
3 capacitors

All three capacitors have name plates that show that they contain high concentration PCBs and have a volume of 30 gallons each. One transformer contains 300 gallons, and is tested at 1000 ppm. The second transformer contains 500 gallons, and is tested at 64% PCBs. It is leaking, and X's general foreman says that about 20 gallons have leaked. The equipment is marked, and X has records on this equipment. Assume the density of all fluids is 10 lbs/gal.

Step 1: Determine the categories of violation.

These are:

Disposal
Storage

Because there are two categories, a calculation is needed for each.

Disposal

Step 2: Find the "circumstances" level. This is level one, for disposal.

Step 3: Find the total amount involved.
Total disposal: 20 gallons.

$$20 \text{ gal.} \times \frac{10 \text{ lbs}}{\text{gal.}} = 200 \text{ lbs.}$$

$$200 \text{ lbs.} \times \frac{.45 \text{ kg.}}{1 \text{ lb.}} = 90 \text{ kg.}$$

Step 4: Make concentration adjustment.

No reduction for PCBs over 100,000 ppm, which is what was spilled.

Step 5: Not applicable.

Step 6: Determine extent category.
90 kg. = Minor

Step 7: Find penalty from matrix.
Level one + Minor = \$5,000

Step 8: Enter \$5,000 on line 1 of the worksheet (Appendix A)

Storage

Step 2: Find "circumstances" level.

Major storage (permeable floor) is level 3.

Step 3: Find total amount involved.

(a) over 100,000 ppm:

1 transformer @ 500 gal.	500
3 capacitors @ 30 gal.	90
	590 gal.

$$590 \text{ gal.} \times \frac{10 \text{ lb.}}{\text{gal.}} \times \frac{.45 \text{ kg.}}{1 \text{ lb.}} =$$

2655 kg. over 100,000 ppm

(b) 500-10,000 ppm:

1 transformer @ 300 gal.	300
300 gal. X 10 lb. X .45 kg.	1350 kg.
	15.

Step 4: Make concentration adjustment.

(a) over 100,000 ppm—no adjustment 2655 kg.

(b) 500-10,000 ppm—50% reduction 1350 kg.
X .50 = 675 kg.

Step 5: Add figures from step 4.

$$\begin{array}{r} 2655 \text{ kg.} \\ + 675 \text{ kg.} \\ \hline 3330 \text{ kg.} \end{array}$$

Step 6: Determine extent category.

3330 kg. = Significant.

Step 7: Find the penalty from the matrix.

Level 3 + significant = \$10,000.

Step 8: Enter \$10,000 on line 1 of the worksheet (Appendix A).

Penalty Assessment for Multiple Violations

In the past, the Office of Enforcement has had numerous questions about which circumstances were appropriate for the assessment of multiple penalties. For the purpose of promoting consistency between regions and to be consistent with the penalty scheme set forth above, the following guidelines should be followed for assessing multiple penalties.

When Not To Assess Multiple Penalties

There are certain instances when separate counts should not be charged and multiple penalties not assessed. The first type of case where this is not appropriate is where a single situation presents violations of many portions of the regulation, which are all in the same violation category. For example, if X Company has a storage area which is unmarked, and which contains one unmarked PCB container, there are two infractions of the regulation: The failure to mark the container, and the failure to mark the storage area. However, only one violation should be charged; namely, a major marking violation. Both infractions present the same risk; that is, that no one will realize that PCBs are present. Accordingly, only one penalty is assessed. If the violation category is one like marking, which appears at several levels of the circumstances axis, the penalty should be assessed by looking at the most serious infraction committed.

Another situation in which only one count should be alleged and one penalty charged is where there are multiple infractions of the same regulatory requirement. For example, if five transformers are unmarked, only one penalty should be charged. Although

five transformers present a greater risk than one transformer, this fact is accounted for by the larger extent category applicable to the situation with five unmarked transformers. Again, the nature of the risk presented is the same, so only one penalty is charged.

When Multiple Penalties Should Be Assessed

The most obvious situation for assessing multiple penalties is where the situation constitutes infractions of different violation categories (e.g., marking and storage). In such instances, one count should be charged for each violation category. This was done in the sample penalty calculation, above.

Another example of multiple penalties used properly is where one company has several PCB situations which are in violation of the regulation in substantially different locations. Different buildings or yards on the same site would be sufficient for a multiple violation; two sites in the same building would not, unless the building is very large (for example, an auto assembly building). In these cases, the separate locations present separate and distinct risks to human health and the environment. Thus, separate penalties are justified.

Assessing Penalties for Continuing or Repeated Violations

Section 16 of TSCA clearly gives the Agency the power to assess penalties on a daily basis for continuing situations, such as where a transformer is improperly stored for a month. It also gives the Agency the discretion to charge a penalty for each separate act of a repeated course of conduct, such as where someone manufactures PCBs on twenty different occasions, without an exemption. However, any simple rule the Agency might develop concerning when to charge multiple counts in such cases is likely to have undesirable effects. For example, a policy which said that only one charge will be assessed for a continuing violation would not adequately protect the environment. Under such a policy, a company with a leaking PCB transformer would have no incentive to correct the leak, since how quickly it acted would not affect the penalty significantly. Alternatively, a policy that required the Agency to assess multiple penalties whenever there was evidence of a continuing

violation would also cause undesirable effects. Someone who stored an intact CB transformer improperly for 30 days could be liable for \$300,000. This penalty, in the absence of aggravating circumstances, seems excessive.

For these reasons, the Agency has developed the "proportional penalty calculation", which is explained in detail below. This calculation should be used whenever there is evidence of continuing violations, or repeated violations which are part of a single course of conduct. Except in unusual circumstances, this calculation will yield the penalty to be charged for such repeated or continuing violations. The effect of this calculation is that the penalty is multiplied for repeated or continuing violations where substantial amounts of PCBs are involved. The magnitude of the multiplication is proportional to the amount of material involved, subject to the limitation of \$25,000 per day. The Agency believes it is appropriate that the very large penalties that can result from continuing or repeated violations be assessed in those situations where large amounts of PCBs are involved.

Nonetheless, the Agency realizes that there may be situations where no multiple penalties are appropriate, or where the violation merits a penalty calculated by multiplying the GBP penalty directly by the number of days or incidents involved. Accordingly, the Agency reserves the discretion to assess penalties for repeated or continuing violations without regard to the proportional penalty calculation.

The Agency expects that, in most cases, the penalty for repeated or continuing violations will be computed by use of the proportional penalty calculation. The discretion to assess penalties more or less than the proportional penalty can be exercised under the following circumstances:

- Where substantial actual harm has occurred as a result of the violation;
- Where the unusual circumstances of the violation give rise to extraordinary risks to the environment; or
- Other types of highly unusual circumstances.

The decision to use this discretion should only be made after consultations with Headquarters personnel in which the reasons for this exercise are explained in detail.

Explanation of the Proportional Penalty

The proportional penalty is calculated in the following manner:

Step 1: Calculate the total amount of PCBs involved in the situation, reduced by the concentration adjustment. Using as an example an individual who

processes 20 gallons of PCBs for 200 days, the total amount is 4,000 gallons (assuming the concentration is greater than 100,000 ppm). If two 50 gallon capacitors are stored improperly for 20 days, the amount involved is 100 gallons.

Step 2: If the amount from step 1 is less than two times the major extent category (10,000 kg. or 2,200 gallons), use this amount to determine the extent category and obtain a penalty from the GBP Matrix. For example, the penalty for the two capacitors improperly stored for 20 days would be \$1,500. Twenty counts would be charged, at a penalty of \$1,500/20 days or \$75 per day. If the amount from step 1 is greater than 2 times the extent category, proceed to step 3.

Step 3: Divide the total amount from step 1 by the major extent category limit (e.g., 5,000 @ kg. or 1,100 gallons). Multiply the result by the amount in the major penalty category. This yields the proportional penalty. Using the example of the individual who processes 20 gallons of PCBs per day for 200 days, the calculation goes as follows:

$$\begin{aligned} &\text{Amount from Step 1} = 4,000 \text{ gal.} \\ &\quad 4,000 \text{ gal.} \div 1,100 \text{ gal. (major limit)} \\ &= 3.6 \times \$20,000 \text{ (major, level 2)} = \$72,000. \text{ Total penalty} \end{aligned}$$

Step 4: Divide the total penalty by the number of days (or events) involved. Enter this amount on line 1 of the TSCA Civil Penalty Assessment Worksheet. In our example:

$$\$72,000 \text{ total penalty} / 200 \text{ days} = \$360 \text{ per day.}$$

This figure goes on line 1 of the worksheet.

The proportional penalty should always be used unless the calculation yields more than \$25,000 per day. In that case, the penalty should be \$25,000 per day, the maximum allowed by statute.

The proportional penalty should be used in the same way as any other penalty derived from the GBP Matrix.

The per day penalty should be entered on line 1 of the TSCA Civil Penalty Assessment Worksheet, and should be adjusted by the factors, such as culpability and violation history, shown on that document, which is attached to this policy.

Dated: April 24, 1980.
Richard D. Wilson,
Deputy Assistant Administrator for General Enforcement.

Civil Penalty Assessment Worksheet

Name of Respondent: _____
Address of Respondent: _____
(1) Complaint I.D. Number: _____
(2) Date Complaint issued: _____

(3) Date Answer Received: _____
(4) Date Default Order Sent: _____
(5) Date Consent Agreement Signed: _____
(6) Date Final Order Sent: _____
(7) Date Remittance Received: _____

1. Grossly Based Penalty (GBP) from matrix _____ \$
2. Percent increase or decrease for culpability _____ %
3. Percent increase for violation history _____ %
4. Add lines 2 and 3 _____ %
5. Multiply GBP by percentage total on line 4 _____ \$
6. Add lines 1 and 5 (subtract line 6 from line 1 if negative percentage) _____ \$
7. Enter line 6 amount or \$25,000, whichever is less _____ \$
8. Multiply line 7 by the number of days of violation _____ \$
9. Government clean-up costs, if any _____ \$
10. Economic gains from non-compliance, if appropriate _____ \$
11. Add lines 8 through 10 _____ \$
12. Total of other adjustments as justice may require _____ \$
13. If line 12 represents a net increase to the penalty and line 12 to line 11, _____ \$
or
If line 12 represents a net decrease to the penalty subtract line 12 from line 1.
*Line 13 should be the proposed penalty for a given violation. This procedure is repeated for each violation.

FR Doc. 80-27769 Filed 9-9-80; 9-45 am
EPA REG CODE 6000-01-03

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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NOV 14 1985
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U.S. ENVIRONMENTAL
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RECEIVED
MANAGEMENT

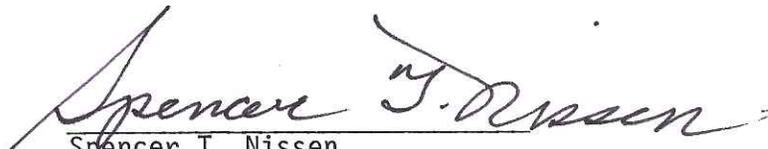
In the Matter of)
Substation Maintenance, Inc.,) Docket No. TSCA-V-C-407
Respondent)

O R D E R

Neither party having complied with the directive in the ALJ's letter, dated August 12, 1985, for the submission of prehearing information, nor furnished any reason for such noncompliance, it is ordered that the information required of the parties by the mentioned letter be submitted on or before December 13, 1985.

Failure to comply with this order will result in dismissal of this proceeding with prejudice in accordance with 40 CFR 22.20 or the entry of a default order pursuant to 40 CFR 22.17.

Dated this 13th day of November 1985.


Spencer T. Nissen
Administrative Law Judge

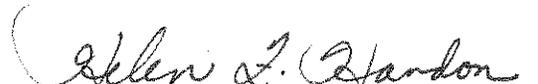
CERTIFICATE OF SERVICE

This certifies that the original of this Order, dated November 13, 1985, in re: Substation Maintenance, Inc., was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to each party in the proceeding as follows:

Robert W. Russell
Substation Maintenance, Inc.
480 N. Main Street
Grafton, Ohio 44044

Levi Wood, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

November 13, 1985


Helen F. Handon
Secretary



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law
Judges (A-110)
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460



Re: Substation Maintenance, Inc.
Docket No. TSCA-V-C-407

Dear Judge Nissen,

This letter is to inform you that no progress has been made in our efforts to settle this case. As indicated in my letter of October 4, 1985, there does not appear to be a party willing to negotiate on behalf of Substation Maintenance, Inc. Therefore, I suggest we proceed with the prehearing exchange.

At this time, I would like to respectfully request a pre-hearing exchange date be set for November 8, 1985. Only if a party comes forth to represent Substation Maintenance, Inc., who requests negotiations in an attempt to reach a settlement, would I foresee postponing this proposed pre-hearing exchange date of November 8.

Thank you for your consideration of this matter.

Respectfully submitted,

Levi Wood

Levi Wood
Assistant Regional Counsel

cc: Honorable Spencer T. Nissen
Administrative Law Judge

cc: Continued

Regional Hearing Clerk (Original hand delivered)

Substation Maintenance, Inc.
c/o Robert W. Russell, Chief Executive Office
480 North Main Street
Grafton, Ohio 44044

Substation Maintenance
4984 Gateway Drive
Medina, Ohio 44256

Mr. Don P. McFadden
Registered Agent for:
Substation Maintenance, Inc.
One Public Square, Suite 1000
Cleveland, Ohio 44113

Mr. James L. Kimbler
Attorney at Law
P.O. Box 153
Lodi, Ohio 44254

CERTIFICATE OF SERVICE

This is to certify that the Original of this status letter to Judge Nissen was filed with the Regional Hearing Clerk on October 23, 1985, and a correct copy was mailed to the following:

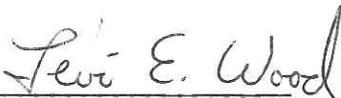
Judge Spencer T. Nissen
Administrative Law Judge
Office of Administrative
Law Judges (A-110)
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Substation Maintenance, Inc.
c/o Robert W. Russell, Chief
Executive Officer
480 North Main Street
Grafton, Ohio 44044

Substation Maintenance
4984 Gateway Drive
Medina, Ohio 44256

Mr. Don P. McFadden
Registered Agent for:
Substation Maintenance, Inc.
One Public Square, Suite 1000
Cleveland, Ohio 44113

Mr. James L. Kimbler
Attorney at Law
P.O. Box 153
Lodi, Ohio 44254


Levi E. Wood
Office of Regional Counsel
U.S. EPA, Region V
Chicago, Illinois



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law
Judges (A-110)
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Substation Maintenance, Inc.
Docket No. TSCA-V-C-407

Dear Judge Nissen,

This letter is to inform you that the above case has not been settled and that a number of difficulties have arisen in our efforts to negotiate a settlement in this case.

As was pointed out to you in his letter of August 13, 1985, attorney for Respondent, Mr. Donald P. McFadden, has withdrawn as attorney for Substation Maintenance, Inc. Mr. McFadden was forced to withdraw because of irreconcilable differences between him and Substation Maintenance, Inc.

In our efforts to pursue a negotiated settlement we contacted Mr. Robert Russell, one of the primary persons of Substation Maintenance, Inc. and were informed a Mr. James L. Kimbler would be the attorney representing Substation Maintenance, Inc. When we called Mr. Kimbler we were told Mr. Russell was in arrears with respect to past bills for services Mr. Kimbler had performed for Substation Maintenance, Inc. and consequently Mr. Kimbler will not undertake any further work on behalf of Mr. Russell or Substation Maintenance, Inc. Under these circumstances we have not been able to make any progress in our efforts to negotiate a settlement.

I apologize for my delay in informing the Court about the progress of this case, but I have been out of Chicago attending federal training for the past three weeks.



OCT 04 1985

Since we do not have a party willing to negotiate with the EPA, I suggest we proceed to the prehearing exchange as outlined in your letter of August 12, 1985. Unless I hear otherwise from the Court or from an opposing counsel, I intend to proceed with the prehearing exchange.

Thank you for your consideration of this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Levi Wood". The signature is written in dark ink and is positioned below the typed name.

Levi Wood
Assistant Regional Counsel

cc: Honorable Spencer T. Nissen
Administrative Law Judge

Regional Hearing Clerk (Original Hand Delivered)

Mr. Robert Russell

CERTIFICATE OF SERVICE

This is to certify that the original of this Status Letter to Judge Nissen was filed with the Regional Hearing Clerk and a correct copy was mailed to the following:

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative
Law Judges (A-110)
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Mr. James L. Kimbler
Attorney at Law
P.O. Box 153
Lodi, Ohio 44254

and

Mr. Robert Russell



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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PROTECTION AGENCY

Office of Administrative Law Judges

Mail Code A-110

August 12, 1985

OFFICE OF
THE ADMINISTRATOR

Donald P. McFadden, Esq.
One Public Square, Suite #1000
Cleveland, Ohio 44113

Levi Wood, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

RECEIVED
FINANCIAL MANAGEMENT
BRANCH
AUG 14 11 01 AM '85

Subject: Substation Maintenance, Inc., Docket No. TSCA-V-C-407

Dear Counselors:

As you are aware, the undersigned has been designated to preside at the subject proceeding under Section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)).

Section 22.18(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 CFR 22.18(a)) sets forth Agency policy concerning settlements and the parties may be negotiating in an attempt to reach a settlement. Counsel for Complainant is directed to file a statement on or before September 18, 1985, as to whether this matter has been or will be settled. If the matter is not settled by that date I propose to accomplish some of the purposes of a prehearing conference by this letter as authorized by Section 22.19(e) of the Rules.

Accordingly, it is directed that the following prehearing exchange take place:

By Complainant and Respondent

1. Desired or required location for the hearing (see Rules 22.19(d) and 22.21(d)).
2. Furnish the names of expected witnesses and copies of any documents or exhibits proposed to be offered at the hearing to the extent not covered by specific requests below.

By Complainant

1. Provide copies of report of inspection of Respondent's Grafton, Ohio facility conducted by authorized representatives of EPA on October 17, 1984.
2. Furnish summary of evidence supporting allegations in Paragraphs 2 and 3, Count I of complaint to the effect that at time of mentioned inspection Respondent had 17 drums of PCB solids and three PCB transformers in storage for disposal and that these materials had been in storage for disposal more than 30 days before the date of inspection.
3. Furnish summary of evidence supporting allegations in Paragraphs 5, 6 and 8, Count I of complaint to the effect that at time of mentioned inspection, the drums of PCB solids and a PCB transformer were not stored in an area with continuous curbing, that there were 42 large PCB capacitors in a metal bin stored for disposal and that none of the mentioned items were dated with the time the items were placed in storage.
4. Furnish summary of evidence supporting allegations in Paragraphs 9 and 12, Count I of complaint to the effect that at time of the mentioned inspection Respondent had two PCB transformers stored for disposal in a metal bin which contained approximately two inches of a water/oil mixture and that these leaked materials had not been cleaned up.
5. Provide copy of analysis referred to in Paragraph 10, Count I of complaint.
6. Furnish summary of evidence supporting allegations in Paragraphs 2 and 3, Count II of complaint to the effect that at time of the mentioned inspection Respondent had one American Transformer Company PCB transformer in storage for disposal and that there was a two-foot square oil spot beneath the drain tap of this transformer.
7. If any analyses were made of the stained soil beneath the transformer referred to in the preceding paragraph, provide copies thereof.

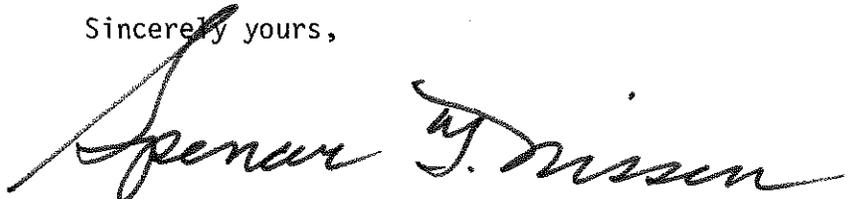
By Respondent

1. Provide summary of any evidence supporting denial of substantive allegations of complaint.
2. Furnish summary of evidence supporting allegations that all PCB materials have been removed from the Grafton facility and that the materials were placed there under license from Transformer Services of Ohio, Inc. or pursuant to the activities of one Gregory Booth.
3. If Respondent is contending that proposed penalty would adversely effect its ability to remain in business, furnish financial statements or other data supporting such contention.

Responses to this letter will be furnished to the Regional Hearing Clerk, to the other party and to the undersigned on or before October 2, 1985.

Upon receipt and review of the responses, a determination will be made as to whether further correspondence would serve any useful purpose or whether this matter should be set for hearing without further delay.

Sincerely yours,

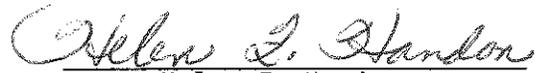
A handwritten signature in cursive script that reads "Spencer T. Nissen". The signature is written in dark ink and is positioned above the typed name.

Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

This certifies that the original of this Letter, dated August 12, 1985, in re: Substation Maintenance, Inc., was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to each addressee.

August 12, 1985


Helen F. Handon
Helen F. Handon
Secretary

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
Substation Maintenance, Inc.,) Docket No. TSCA-V-C-407
Respondent)

ORDER OF DESIGNATION

Administrative Law Judge Spencer T. Nissen, Environmental Protection Agency, Washington, D. C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)), pursuant to Section 22.21(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 CFR 22.21(a)).

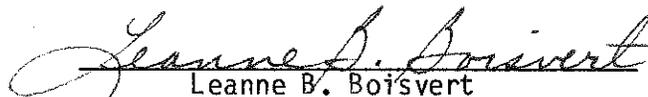

Edward B. Finch
Chief Administrative Law Judge

Dated: 8-7-85

Washington, D. C.

CERTIFICATION

I hereby certify that the original of this Order of Designation was mailed to the Regional Hearing Clerk, U.S. EPA, Region V, and copies were sent to Respondent and Complainant in this proceeding.


Leanne B. Boisvert
Legal Staff Assistant

Dated: August 7, 1985

Telephone (312) 353-1669

July 26, 1985

Honorable Edward B. Finch
Chief Administrative Law Judge
Office of Administrative Law
Judges (A-110)
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Re: Substation Maintenance, Inc.
TSCA-V-C-407

Dear Judge Finch:

I am enclosing copies of transmittal letter, and Complaint and Notice of Opportunity for Hearing, respondent's Answer to Complaint and Request for Hearing in the above-captioned proceeding.

The respondents in the above-listed action have requested a hearing. Therefore, I am requesting that an Administrative Law Judge be assigned to conduct a hearing.

Please advise as to which Administrative Law Judge will be assigned to this case.

Sincerely,

Beverly S. Thompson
Regional Hearing Clerk

Enclosures

cc: Donald P. McFadden Co., LPA
Attorney for Respondent
Phone: 216-241-6055

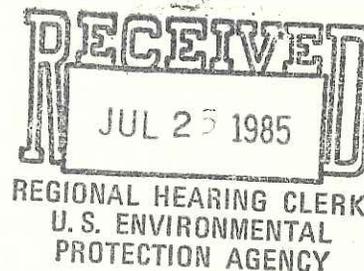
Levi Wood
Office of Regional Counsel
Phone: 312-353-2094

Law Offices of
Donald P. McFadden Co., L.P.A.

One Public Square
Suite 1000
Cleveland, Ohio 44113

Donald P. McFadden
John P. Lutseck

(216) 244-6055



July 24, 1985

U. S. Environmental Protection Agency
Region 5
230 South Dearborn Street
Chicago, Illinois 60604
Attn: Regional Hearing Clerk:

In re: Substation Maintenance, Inc., USEPA Region 5, TSCA-V-C-407

Dear Ms. Thompson:

This letter confirms my conversation with Mr. Robert Anderson, Region Judicial Officer of USEPA, who granted the Motion of Extension for time of one day.

Thank you for your consideration in this matter.

Very truly yours,

DONALD P. McFADDEN CO., L.P.A.

Donald P. McFadden
DONALD P. McFADDEN

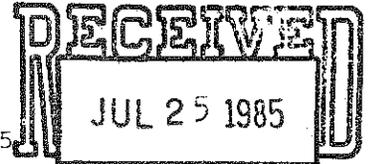
DPM:sm

cc: Levi Wood
Peter J. Kelly



SUBSTATION MAINTENANCE, INC.

4984 Gateway Drive Medina, Ohio 44256 (216) 722-1170
800-421-5816 (Ohio) 800-421-5817 (National) Telex: 757664 SMI



July 1, 1985

REGIONAL HEARING CLERK
U. S. ENVIRONMENTAL
PROTECTION AGENCY

Donald P. McFadden L.P.A.
One Public Square
Suite 1000
Cleveland Ohio 44113

RE: PCB REMOVAL GRAFTON

Dear Mr. McFadden:

Items removed from 480 N. Main St., Grafton Ohio 44044:

- | | |
|---------------------|------------------------------|
| A. AMOCO OIL | BY: PETROCHEM SERVICES INC. |
| B. PETROCHEM | BY: " " " |
| C. FORD MOTOR CO. | BY: MARINE POLLUTION CONTROL |
| D. CHICAGO EXTRUDED | BY: SCA CHEMICAL SERVICES |

Also request a informal settlement conference.

Yours truly,
SUBSTATION MAINTENANCE INC.

George I. Smith
Troubleshooter

GIS:bk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

RECEIVED
JUL 25 1985

REGIONAL HEARING CLERK
U. S. ENVIRONMENTAL
PROTECTION AGENCY

IN RE:)	CASE NO. TSCA-V-C-400
)	
)	
SUBSTATION MAINTENANCE, INC.)	<u>ANSWER AND REQUEST FOR</u>
MEDINA, OHIO)	<u>HEARING</u>
)	
)	
Respondent.)	

ANSWER

1. Respondent denies each and every all and singular, all the allegations contained in the Complaint.
2. The Complaint fails to state, a claim upon which relief can be granted.
3. Upon information and belief all of the materials referred to in the Complaint have been removed from the Grafton facility.
4. The materials in the Grafton facility were placed there, by and under the license of Transformer Services of Ohio, Inc., an Ohio Corporation, and or were placed there pursuant to the activities of Gregory Booth.
5. Respondent questions the inspection and the procedures under which the inspection was conducted.

WHEREFORE, having fully answered the Complaint, respondent requests that an Oral Hearing be scheduled, and that the Complaint be dismissed.

Respectfully submitted

DONALD P. McFADDEN CO., L.P.A.

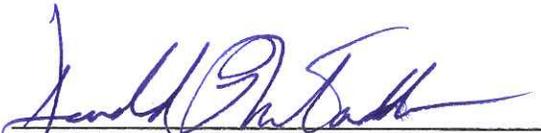


DONALD P. McFADDEN, Attorney
for Substation Maintenance, Inc.
One Public Square, Suite #1000
Cleveland, Ohio 44113
(216) 241-6055

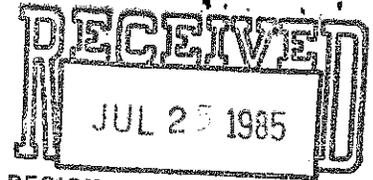
CERTIFICATE OF SERVICE

A copy of the foregoing Answer and Request for Hearing was sent by Federal Express to Levi Wood, Assistant Regional Counsel, Office of Regional Counsel (5C-16), U. S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 and Beverly Thompson, Regional Hearing Clerk, U. S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 this 24th day of July, 1985.

DONALD P. McFADDEN CO., L.P.A.



DONALD P. McFADDEN, Attorney
for Substation Maintenance, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION V U.S. ENVIRONMENTAL PROTECTION AGENCY

IN RE:) CASE NO. TSCA-V-C-407
)
)
SUBSTATION MAINTENANCE, INC.) ANSWER AND REQUEST FOR
MEDINA, OHIO) HEARING
)
)
Respondent.)

ANSWER

1. Respondent denies each and every all and singular, all the allegations contained in the Complaint.
2. The Complaint fails to state, a claim upon which relief can be granted.
3. Upon information and belief all of the materials referred to in the Complaint have been removed from the Grafton facility.
4. The materials in the Grafton facility were placed there, by and under the license of Transformer Services of Ohio, Inc., an Ohio Corporation, and or were placed there pursuant to the activities of Gregory Booth.
5. Respondent questions the inspection and the procedures under which the inspection was conducted.

WHEREFORE, having fully answered the Complaint, respondent requests that an Oral Hearing be scheduled, and that the Complaint be dismissed.

Respectfully submitted

DONALD P. McFADDEN CO., L.P.A.



DONALD P. McFADDEN, Attorney
for Substation Maintenance, Inc.
One Public Square, Suite #1000
Cleveland, Ohio 44113
(216) 241-6055

CERTIFICATE OF SERVICE

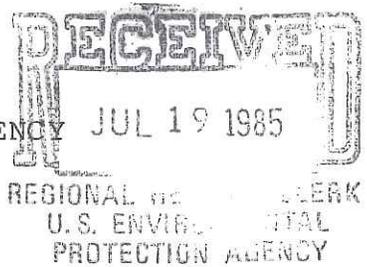
A copy of the foregoing Answer and Request for Hearing was sent by Federal Express to Levi Wood, Assistant Regional Counsel, Office of Regional Counsel (5C-16), U. S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 and Beverly Thompson, Regional Hearing Clerk, U. S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 this 5th day of July, 1985.

DONALD P. McFADDEN CO., L.P.A.



DONALD P. McFADDEN, Attorney
for Substation Maintenance, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V



IN THE MATTER OF:)
) TSCA-V-C-407
Substation Maintenance, Inc.)
Grafton, Ohio)
)

CERTIFICATE OF SERVICE

I certify that on July 18, 1985, an original and one copy of an ORDER FOR EXTENSION OF TIME was hand delivered to:

Beverly Thompson
Regional Hearing Clerk
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

and one copy was hand delivered to:

Levi Wood
Office of Regional Counsel
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

and a copy was sent by first class mail, postage prepaid, to:

Donald P. McFadden
One Public Square
Suite 1000
Cleveland, Ohio 44113



Cheryl Klebenow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)
)
Substation Maintenance, Inc.) TSCA-V-C-407
Grafton, Ohio)
)
)

ORDER

For good cause shown, Respondent, Substation Maintenance, Inc., Grafton, Ohio, is granted an extension of time up to and including July 24, 1985, to answer the Complaint and to request a hearing in this matter.



Robert M. Andersen
Regional Judicial Officer
U.S. Environmental Protection
Agency

Dated 7/15, 1985

Law Offices of
Donald P. McFadden Co., L.P.A.
One Public Square
Suite 1000
Cleveland, Ohio 44113

Donald P. McFadden
John P. Lutsek

(216) 244-6055



July 10, 1985

United States Environmental
Protection Agency
Region 5
230 South Dearborn Street
Chicago, Illinois 60604
Attn: Regional Hearing Clerk:

In re: Substation Maintenance, Inc., USEPA Region 5, TSCA-V-C-407

Dear Sir:

This letter confirms my conversation with Peter J. Kelly of the office of Regional Counsel USEPA, who agreed that my client Substation Maintenance, Inc., would have until July 24, 1985, within which to file its "Answer and Request for Hearing", in response to the complaint in the above-captioned case.

Thank you for your consideration in this matter.

Very truly yours,

DONALD P. McFADDEN CO., L.P.A.


DONALD P. McFADDEN

DPM:sm

cc: Levi Wood
Peter J. Kelly

JUL 15 3 56 PM '85
RECEIVED
FINANCIAL MANAGEMENT
BRANCH

JUN 17 1985

5S-P&TS8-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ESCA-V-C-407

Mr. Don P. McFadden
Registered Agent for:
Substation Maintenance, Inc.
One Public Square
1000
Cleveland, Ohio 44113

Re: Complaint and Notice of
Opportunity for Hearing
Substation Maintenance, Inc.

Dear Mr. McFadden:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2601 et seq., discovered by United States Environmental Protection Agency inspectors at the Substation Maintenance, Inc. facility, 480 North Main Street, Grafton, Ohio.

I recommend that the enclosed Complaint and Rules of Practice, 40 CFR Part 22, be carefully read and analyzed to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

If Substation Maintenance, Inc. chooses to request a hearing to contest the facts alleged in the Complaint, an Answer and Request for Hearing is required to be filed with the Regional Hearing Clerk within the prescribed time limit of twenty (20) days following service of this Complaint. A copy of your Answer and Request for Hearing should be sent to Mr. Levi Wood, Assistant Regional Counsel, Office of Regional Counsel (5C-16), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Mr. Wood's telephone number is (312) 353-2094.

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within twenty (20) days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint. Such failure shall result in the issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Whether or not you request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. If you have any questions about this matter or desire to request an informal conference for the purpose of settlement, please write to Greg Czajkowski, Toxic Substances Section (5S-P&TSB-16), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, or you may telephone him at (312) 353-2291.

Sincerely,

William H. Sanders III, P.E.
Director, Environmental Services Division

Enclosures

bcc: Regional Hearing Clerk (w/Encl.) ✓
OCM/Stangel (EN-342) (w/Encl.)
Office of Regional Counsel (w/Encl.)
Office of Public Affairs (w/Encl.)
Toxic Substances Section/Kleban (w/Encl.)
Toxic Substances Section/Czajkowski (w/Encl.)
Ohio Environmental Protection Agency (w/Encl.)
OEPA/Schultz (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED
JUN 14 1985

REGION V

IN RE:)
))
SUBSTATION MAINTENANCE, INC.)
MEDINA, OHIO)
) Respondent.)
))

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

I
COMPLAINT

TSCA-V-C-407

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (hereafter "TSCA"), 15 U.S.C. Section 2615(a). The Complainant is the Director, Environmental Services Division, Region V, United States Environmental Protection Agency (hereafter U.S. EPA). The Respondent is Substation Maintenance, Inc., Medina, Ohio, which is, and was at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Ohio, with a place of business at 480 North Main Street, Grafton, Ohio 44044.

This Complaint serves as notice of the Director's preliminary determination that Respondent has violated Federal regulations regarding the storage and disposal required for polychlorinated biphenyls (PCBs), 40 CFR Part 761, promulgated under Section 6 of TSCA and thereby has violated Section 15 of TSCA, 15 U.S.C. Section 2614.

The regulations cited herein, lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31542), were subsequently partially recodified and amended (see 40 CFR Part 761 et seq., July 1, 1984 ed.).

COUNT I

1. On October 17, 1984, representatives of the U.S. EPA conducted an inspection of the Respondent's Grafton, Ohio facility to determine compliance with Federal regulations, 40 CFR Part 761. et seq., governing PCBs.

2. At the time of inspection, the Respondent had 17 drums of PCB solids and three PCB transformers in storage for disposal.

3. Shipping manifests for the drums of PCB solids and the PCB transformers indicated that the materials had been placed into storage for disposal more than 30 days before the date of inspection.

4. 40 CFR § 761.65(b)(1) requires that PCBs stored for disposal for a period over 30 days must be stored in a facility which has adequate roof and walls; continuous curbing with minimum six inch high curb; no drain valves, floor drains, expansion joints, sewer lines, or other openings; and floors and curbing constructed of smooth and impervious materials.

5. The 17 drums of PCB solids and the American Transformer Co. PCB transformer were not stored in an area with continuous curbing.

6. At the time of inspection, the facility had 42 large PCB capacitors in a metal bin, stored for disposal.

7. 40 CFR § 761.65(c)(8) requires PCB articles must be dated on the article or container when they are placed in storage.

8. At the time of inspection, the 17 drums of PCB solids, three PCB transformers, and the bin containing 42 large PCB capacitors were not dated when they were placed into storage.

9. At the time of inspection, the facility had two PCB transformers stored for disposal in a metal bin which contained approximately two inches of water/oil mixture.

10. Subsequent analysis of the water/oil mixture showed 21 ppm PCBs.

11. 40 CFR § 761.65(c)(5) requires that any spilled or leaked materials be immediately cleaned up and PCB-contaminated materials and residues be disposed of in accordance with § 761.60(a)(4).

12. At the time of inspection, the leaked materials had not been cleaned up.

13. The Respondent's failure to properly store the 17 drums of PCB solids and the PCB transformer; to date all PCB articles when they were placed into storage; and to clean up spilled PCBs in a storage area constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614 and 40 CFR §§ 761.65(b)(1), 761.65(c)(5) and 761.65(c)(8).

COUNT II

1. Complainant incorporates by reference paragraph 1 of Count I as if fully recited herein.

2. At the time of inspection, the facility had one American Transformer Company PCB transformer in storage for disposal.

3. At the time of inspection the inspectors observed a two foot X two foot oil spot beneath the drain tap of the American Transformer Company PCB transformer.

4. Such releases or spills by Respondent of PCBs into the environment constitute uncontrolled discharges and are illegal disposals under 40 CFR § 761.60(d)(1) in violation of Section 15 U.S.C. § 2614, and 40 CFR § 761.60(a).

II

PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. Section 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. Based upon the facts alleged in Part I of this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's history of prior violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

COUNT I

Improper Storage.....\$10,000
15 U.S.C. § 2614
40 CFR § 761.65(b)(1)
40 CFR § 761.65(c)(5)
40 CFR § 761.65(c)(8)

COUNT II

Improper Disposal.....\$ 5,000
15 U.S.C. § 2614
40 CFR § 761.60(a)

TOTAL PENALTY.....\$15,000

Payment of this penalty may be made by certified or cashier's check, payable to the United States of America, and remitted to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
P.O. Box 70753
Chicago, Illinois 60673

The penalties proposed in Part II of this Complaint were derived by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for each assessment is explained in detail in the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy," which appears in the Federal Register of September 10, 1980, at 45 Fed. Reg. 59770.

III

OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA Section 16(a) and in accordance with the Administrative Procedure Act (5 U.S.C. Section 552 et seq.), you have the right to request a hearing regarding the proposed Order to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If you wish to avoid being found in default, you must file an Answer and a Request for Hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within twenty (20) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or which shall clearly

state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments which are alleged to constitute the grounds of defense.
2. The facts which Respondent intends to place at issue.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. A copy of this Answer should be sent to Mr. Levi Wood, Assistant Regional Counsel, Office of Regional Counsel (5C-16), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Mr. Wood may be telephoned at (312) 353-2094.

Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. Section 552 et seq.) and the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (40 CFR Part 22), a copy of which accompanies this Complaint. If you fail to file a written Answer and Request for Hearing within twenty (20) days of service of this Complaint, a Default Order may thereafter be issued by the Regional Administrator. As Respondent your default constitutes a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing under TSCA. The civil penalty proposed herein shall then

become due and payable without further proceedings. Such Default Order is not subject to review in any court.

IV

SETTLEMENT CONFERENCE

Whether or not you request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to Greg Czajkowski, Toxic Substances Section (5S-P&TSB-16), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, or telephone him at (312) 353-2291.

Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written Answer and Request for Hearing must be submitted. The informal conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Administrator, U.S. EPA, Region V. The issuance of such a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a hearing within the 20-day time period allowed by this Notice, the above penalties will become due and payable upon the Regional Administrator finding you in default and issuing an Order for payment of penalties not in excess of those proposed herein. Refusal to remit such penalty will result in the referral of this matter to the United States Attorney for collection.


William H. Sanders III, P.E.
Director, Environmental Services Division
U.S. Environmental Protection Agency
Region V
Chicago, Illinois 60604

Dated: _____

6/13/85

CERTIFICATE OF SERVICE

This is to certify that the ORIGINAL and ONE copy of this Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk on 6-17-85 and that a true and correct copy was mailed with the Consolidated Rules of Practice to Respondent at:

Mr. Don P. McFadden

Substation Maintenance, Inc.

One Public Square #1000

Cleveland, Ohio 44113


Gloria Willis
Office of Regional Counsel
U.S. Environmental Protection
Agency
Chicago, Illinois